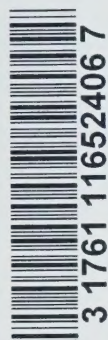


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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 153

DATE: Tuesday, October 31st, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -


IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, October 31st,
1989, commencing at 8:30 a.m.

VOLUME 153

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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<u>FRANK D. KENNEDY,</u>	
<u>J. JOSEPH CHURCHER,</u>	
<u>RICHARD WILLIAM GROVES,</u>	
<u>HARTLEY MULTAMAKI,</u>	
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I N D E X O F E X H I B I T S

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910	Project summary and environmental checklist re: Red Squirrel Road.	26480
911	Green binder produced by MOE.	26489

1 ---Upon commencing at 8:30 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ladies and gentlemen, just before we
5 start, we want to deal later today with the procedural
6 matters that we discussed last week as well as the
7 submissions regarding the possible relocation of parts
8 of the hearing.

9 We have been advised that Mr. Edwards
10 cannot attend later in the day due to a doctor's
11 appointment and we also understand that Mr. Hunter
12 cannot attend at all. We would like to canvass whether
13 or not the parties would be prepared to discuss these
14 matters after the lunch break during which time Mr.
15 Edwards could probably attend.

16 Now, I don't see Ms. Swenarchuk here. Is
17 she available?

18 MS. SEABORN: I understand, Mr. Chairman,
19 she was arriving last night or perhaps early this
20 morning.

21 THE CHAIRMAN: So she is in Thunder Bay
22 as far as you know?

23 MS. SEABORN: I haven't seen her this
24 morning so I can't say that. She told me last week she
25 was planning on coming up for the procedural discussion

1 though.

2 MR. SHIBATANI: Mr. Chairman, Mr. Cosman
3 will be arriving at eleven this morning.

4 THE CHAIRMAN: At eleven. Well, if Ms.
5 Swenarchuk is in fact here, and Mr. Cosman I assume
6 will get in around eleven, then perhaps we can hold
7 this discussion after lunch instead of later in the day
8 and that way Mr. Edwards will be able to attend.

9 And Mr. Hunter, unfortunately, won't be
10 in attendance, but it's difficult to have all parties
11 present for every discussion, so that we will be
12 advising his office in any event that we will be
13 holding these discussions at the conclusion of the
14 break for lunch.

15 Apart from that, it would be our
16 intention to go today until probably 5:00 or 5:30, in
17 around that hour, and as most of you are aware, there
18 are some festivities planned for this evening, so we
19 will make sure we get out of here in time to take a
20 break for that.

21 Any other procedural matters to deal with
22 at this time?

23 (no response)

24 Very well. Mr. Axford, carry on.

25 MR. AXFORD: Thank you. Let's turn our

1 mike on this morning here.

2 JOHN McNICOL,
3 FRANK D. KENNEDY,
4 J. JOSEPH CHURCHER,
5 RICHARD WILLIAM GROVES,
6 HARTLEY MULTAMAKI,
7 ALBERT BISSCHOP,
8 ROGER W. DAVISON,
9 ROBERT THOMAS FLEET, Resumed

10 CONTINUED CROSS-EXAMINATION BY MR. AXFORD:

11 Q. I would just like to start off by
12 asking Mr. Multamaki and Mr. Groves: You had made some
13 comment, both of you, with regard to -- I think you
14 characterized the attitude of the tourism operators on
15 Little Vermilion as being relatively happy with the
16 situation that they were in with the fact that a cut
17 was made to the edge of the lake.

18 And I wonder if you would further comment
19 on that this morning?

20 MR. GROVES: A. I am not certain that I
21 commented on it that they were happy with the cut to
22 the lakeshore. I think I commented on it that they
23 were satisfied with, generally speaking, the ongoing
24 operations and the agreement that they had reached with
25 us, and even though the MNR made an error in the
26 particular instant of the trespass or in harvesting
27 operations to the lakeshore, that they were satisfied
28 enough with us that they were willing to continue

1 negotiating harvesting in the 400 to 800-foot zone.

2 THE CHAIRMAN: Mr. Groves, was that an
3 error, as you describe it, on the part of MNR in the
4 sense that they authorized cutting to the lake, or was
5 it a trespass in that the operator without permission,
6 without any authority cut to the lake?

7 MR. GROVES: It was a combination of
8 those in fact, that the MNR was marking the perimeter
9 of the harvest area, we marked the line in the wrong
10 location and the company cut to the line that we
11 marked.

12 THE CHAIRMAN: I see. Okay.

13 MR. MULTAMAKI: I guess it's important to
14 realize that the company itself had maps and the maps
15 did show exactly what the harvest cut boundary should
16 have been and technically they are responsible for the
17 harvest cuts. So I guess it was a combination of both
18 the Ministry and company.

19 MR. AXFORD: Q. That being the case and
20 if, as you say, MNR marked the line in the wrong place,
21 what redress would one of the operators on the lake
22 have; is MNR responsible for this error?

23 MR. GROVES: A. MNR is accountable for
24 the error.

25 Q. Does that mean they pay money, does

1 that mean they say sorry, or what does that mean?

2 MR. MULTAMAKI: A. No. As I remember
3 the issue, we committed ourselves to replanting the
4 area as quickly as possible and regenerating it back to
5 conifer species the next year and that was our
6 commitment to addressing what had taken place there.

7 Q. Are you aware of any further
8 correspondence from either of those operators
9 indicating what damage that trespass has done?

10 A. The latest correspondence I have seen
11 was dated October 28th and October 29th, 1989 and I saw
12 that 15 minutes ago. So that is the latest
13 correspondence I have seen on the subject.

14 Q. And how would you characterize that
15 correspondence?

16 A. They indicate that I guess they are
17 not happy about the situation, and they also indicate
18 that they want to be involved in a formal process to
19 determine what takes place in resource management.

20 Q. With that in mind perhaps you would
21 be prepared to table that correspondence as evidence?

22 MR. FREIDIN: Mr. Chairman, I take the
23 position that that correspondence should not be filed
24 as evidence. There are two letters which were prepared
25 on the weekend obviously in response to what happened.

1 There are two letters, one from each of the tourist
2 operators, who indicate what their views are on the
3 evidence in part which took place last week.

4 In my submission that evidence is
5 evidence which should come from those operators and,
6 having regard to the circumstances in which it arose, I
7 am not willing to rely on Mr. Axford's undertaking that
8 those two people in fact would be produced; he has no
9 power over them.

10 I think it would be prejudicial in the
11 circumstances and I object to those letters being
12 filed.

13 THE CHAIRMAN: Mr. Axford, what assurance
14 do you have that these witnesses would be available for
15 cross-examination, when we reach Red Lake I presume?

16 MR. AXFORD: Well, I can give you
17 assurance that those witnesses would be pleased to
18 speak. On that ground, as long as they could be
19 brought forward, I would be quite prepared to leave the
20 letters off the table at the moment. But, you know,
21 the issue here is that there is a disagreement of
22 views.

23 THE CHAIRMAN: Well, there is a
24 disagreement of views but you can understand the
25 position to some extent of Mr. Freidin that these

1 letters--

2 MR. AXFORD: Absolutely.

3 THE CHAIRMAN: --that these letters get
4 tabled and there may be questions that Mr. Freidin or
5 even the Board would want to put to these witnesses
6 concerning the circumstances under which some of the
7 comments arose in the letters and they may have
8 information that would clarify the positions put
9 forward in their letters or other matters, and if they
10 aren't available to be questioned, then given the
11 circumstances that these letters were written
12 presumably within the last few days - and I think it's
13 reasonable to presume that the letters were written
14 perhaps as a result of some of the testimony that went
15 on last week - that they should be available for
16 questioning if in fact we are going to table the
17 letters.

18 So we can do it one of two ways: We can
19 table the letters upon the understanding that the
20 witnesses would be produced at a later date, failing
21 which the Board might consider issuing a subpoena if
22 necessary, or we can hold off and table the letters at
23 such time as we hold the proceeding in Red Lake.

24 MR. AXFORD: I would be quite happy if
25 the letters were held until we were in Red Lake until

1 the witnesses can be produced, but it's important that
2 that side of the issue be seen and it's not important
3 that it be seen today.

4 THE CHAIRMAN: All right. Then let's do
5 it that way, we will wait until Red Lake and if you
6 want to produce the letters at that time then we will
7 expect the witnesses to be produced to identify the
8 letters and answer any questions with respect to them.

9 MR. AXFORD: So could the witnesses be
10 directed to hold those letters, or should that be held
11 by the Board, or how shall that be dealt with?

12 THE CHAIRMAN: Mr. Freidin, will you give
13 an undertaking that those letters will in fact be
14 produced in Red Lake when requested?

15 MR. FREIDIN: The Ministry will retain
16 them and make them available if necessary in Red Lake.

17 THE CHAIRMAN: Thank you.

18 MR. MARTEL: Could I ask a question, Mr.
19 Axford, about that cut. This cut was presumably a
20 clearcut right to the shore, not very big, but
21 nonetheless a clearcut?

22 MR. GROVES: From talking to the staff
23 and getting my memory refreshed on that, what it was
24 was an area where the -- if you remember on the map
25 itself, there was an alder tree swale along the edge of

1 the lake and the gentleman marking the line misplaced
2 or misinterpreted on the ground the tree alder swale
3 for standing timber, so there was harvesting in a small
4 block to the edge of the alder swale.

5 MR. MARTEL: Or to the shoreline?

6 MR. GROVES: No.

7 MR. MARTEL: Not to the shoreline?

8 MR. GROVES: That is my understanding, it
9 was not to the shoreline.

10 MR. MULTAMAKI: Yeah. I personally
11 inspected that area immediately after the trespass had
12 taken place or this incident had occurred and the alder
13 swale or the band of alder that was between the lake
14 and the harvest cut, as I remember it, was -- I am not
15 sure of the distance, but it was fairly substantial and
16 the alders themselves were 15 or 20 feet tall. So an
17 individual painting a line and walking along that area
18 could have been confused as to where the actual
19 shoreline was.

20 MR. MARTEL: All right.

21 MR. AXFORD: Q. I am going to leave this
22 topic shortly but before I do I would like to ask Mr.
23 McNicol, with regard to accessing a wilderness lake,
24 perhaps on the fish and wildlife side, you could give
25 me some indication if a new access becomes possible to

1 a wilderness lake, you know -- I guess I should
2 characterize the size first.

3 Hypothetically if we had a lake, say, a
4 mile by a mile or something along that line and a new
5 access given to it, about how many years does it take
6 for the fishing to change in that lake? Could you
7 comment on that?

8 MR. McNICOL: A. The assumption then is
9 that we are speaking of a situation where access is
10 freely provided, not closed as in this case?

11 Q. We are speaking about access being
12 freely provided, yes.

13 A. And the species in the lake?

14 Q. It would be pickerel.

15 A. And your question exactly then is:
16 How long would fishing pressure be sustained?

17 Q. I guess the question more correctly
18 is: Does that access make a difference to wilderness
19 type fishing? Does it change the quality of fishing
20 over time?

21 A. I would have to say that it's a
22 function of the circumstances in that particular area.

23 If that situation occurred approximate to
24 Thunder Bay where we have a population of 120,000, no
25 question; in the situation that you are speaking of

1 in relatively remote areas where you do not have the
2 same kind of population base, I would suggest it
3 would -- certainly it would tinge the character of
4 wilderness fishing, there is no question about that,
5 but how great an impact it would have on that
6 particular waterbody would be a function of how many
7 anglers that were approximate to that particular area.

8 Q. I think that is what I am looking
9 for, and I think I would leave the Little Vermilion
10 area for the time being until we get to Red Lake
11 because there is a difference of opinion on that.

12 I would like to ask then on Document No.
13 844A - I think it's 844, it's really hard to read on
14 there - and it would be page B on that. What we are
15 looking at is the little map, sort of a diagram. This
16 will be to Mr. Kennedy.

17 All right. Okay, on this page B I note
18 that there is a spawning area marked on there. Is the
19 90-metre area of concern typical for that kind of a
20 spawning area? Is that what we are looking at here?

21 MR. KENNEDY: A. First of all, you
22 should realize that the sketch was produced to make the
23 point of the difference between a value and an area of
24 concern and, as such, it's just indicating that the
25 value that is present on the upper part of the diagram

1 was a warm water walleye lake plus the spawning area
2 and, yes, under some circumstances that could result in
3 a 90-metre area of concern.

4 Q. How would you have established the
5 distance of 90 metres on that kind of a thing?

6 A. By applying the fish habitat
7 guidelines.

8 Q. Okay. If the value of a spawning
9 area generated a 90-metre area of concern could you --

10 A. I beg your pardon?

11 Q. If the value of a spawning area
12 generated a 90-metre area of concern, could you tell me
13 how you would determine the size of area of concern for
14 an outpost lodge located roughly in the same area?

15 A. Okay. I am a bit confused by your
16 question. Perhaps I should back up and ask you for
17 clarification.

18 In this case we are not talking about the
19 value of the spawning area. When we speak of values we
20 are just recording the fact that there is a resource
21 feature on the landscape, so we have not attributed a
22 value in a numerical sense or qualitative sense to the
23 spawning area or the walleye lake other than to
24 acknowledge its existence.

25 Q. You agree that it has a value?

1 A. Yes, it has a value.

2 Q. And that value generated an area of
3 concern?

4 A. Yes.

5 Q. Okay. Would a value of an outpost
6 camp generate an area of concern?

7 A. Yes.

8 Q. How does one tell the difference
9 between -- since you haven't given us a difference in
10 values, is there any difference in the size of areas of
11 concern?

12 A. Yes, area of concern widths and the
13 prescriptions that are part of the area of concern do
14 vary depending on the type of values or resource
15 features that are found within the management unit.

16 Q. Oh. Then some values have higher
17 values than other values?

18 A. No, I wouldn't necessarily say that
19 in terms of setting prescriptions.

20 Q. Would some values have higher areas
21 of concern than other areas?

22 A. Well, through the area of concern
23 planning process prescriptions are developed to address
24 the value that is there. Depending on the nature of
25 the value there could be a variance in the prescription

1 which can include width of area that is reserved from
2 harvest as an example or width of area that is
3 modified.

4 Q. Let me try it again. Do some values
5 cause larger or smaller areas of concern than other
6 values?

7 A. Yes.

8 Q. Okay. Who makes that determination
9 and how is it made?

10 A. The determination is made by the
11 planning team by applying the area of concern planning
12 process which we have outlined before the Board and, in
13 the case of doing that, we use a number of resource and
14 environmental manuals, as well as provincial guidelines
15 to guide the planning team in the determination of the
16 appropriate prescription to address the value that is
17 present.

18 Q. Okay. I think I am now to the point
19 where we have got different size areas of concern and I
20 would wonder if we could find out if there is a
21 different size area of concern for a main base lodge,
22 or for -- does a main base lodge generate a different
23 area of concern than an outpost camp?

24 A. Well, there is no set prescription
25 that we use province wide to recognize the presence of

1 those values. It is possible that the main base lodge
2 would be afforded a larger prescription -- sorry, a
3 larger area in an area of concern than an outpost camp,
4 although I can conjure up situations where the reverse
5 may apply.

6 Q. Did I hear you say that there is no
7 provincial mechanism to recognize a main base lodge?

8 A. No, I believe--

9 Q. Could you repeat, I am sorry?

10 A. --that there is no set provincial
11 prescription that applies universally across the
12 province for each main base lodge or outpost camp.
13 Through the area of concern planning process they are
14 treated individually and they recognize the
15 characteristics of the area where those establishments
16 have been -- where those establishments exist and we
17 take into account other values and features on the
18 landscape, including the kind of waterbodies that may
19 be associated with them, their proximity to other uses
20 and other values that are on the landscape.

21 So it...

22 Q. Would it ever take into account the
23 economics of that lodge?

24 A. Yes, I can think of situations where
25 advice has been provided by Ministry of Tourism and

1 Recreation relative to the economic importance of
2 outpost camps to individual tourist establishments.

3 Q. Good. Now, I would like you to turn
4 for just a second to Document No. -- looks like Exhibit
5 882 and, again, it's awfully hard to read, but I show
6 it as page 6 on here. I don't want a lot from this
7 document, so...

8 A. I agree with you, it is difficult to
9 read. Perhaps you could --

10 Q. I could maybe just read what I am
11 looking for here.

12 A. Slowly, please.

13 MR. FREIDIN: The front page of the
14 document says Planning Team Area of Responsibility.
15 It's page 2 in the lefthand corner -- page 2,
16 1986/09/19.

17 MR. KENNEDY: Yes, I found the exhibit.

18 MR. AXFORD: What I am looking for is
19 page 4 right near the bottom.

20 MR. FREIDIN: Page 4 or 6?

21 MR. AXFORD: I just wanted to give you
22 the front page so you would know. It says page 4 here.
23 All I am looking for is this statement here.

24 MR. FREIDIN: Page 4 top lefthand --

25 MR. KENNEDY: Very good.

1 MR. AXFORD: Q. Okay. All I am looking
2 for, on the second statement to the bottom it says that
3 this fellow Mr. English, who is the fish and wildlife
4 representative, has a responsibility to negotiate
5 certain concerns.

6 And I would then ask you with that in
7 mind: Who negotiates for the economic concerns of this
8 particular main base lodge or a hypothetical main base
9 lodge?

10 MR. KENNEDY: A. Okay. The point that
11 you are referencing is in the outline of the planning
12 team areas of responsibility, in addressing those that
13 are outlined for the fish and wildlife representative,
14 and there is an indication to negotiate these areas of
15 concern where possible at the bottom of that page 4.

16 It is just an indication of the fact that
17 it is that individual that would be discussing the fish
18 and wildlife information at the planning team.

19 Q. I think it says negotiate.

20 A. Yes, it does. In the case of a
21 tourism concern, first of all, that kind of information
22 can be brought forward, as I have indicated, through
23 representatives from Ministry of Tourism.

24 Q. I don't remember seeing them on the
25 planning team. How would that happen?

1 A. I am not sure if they were present on
2 this one.

3 Q. I am pretty sure they weren't on
4 there. Do you want to check?

5 A. Yes, I would.

6 MR. MULTAMAKI: A. They were identified
7 as a resource person. I think Mr. Courtney was
8 identified in those terms of reference and he was
9 identified as what would be now an advisor to the
10 planning team.

11 Q. I think I saw Mr. Sayeau on there
12 also, but I am looking for people that have the power
13 to negotiate certain things and I don't believe you
14 will find Mr. Courtney in that position or Mr. Sayeau
15 or any advisor.

16 MR. KENNEDY: A. Well, as advisors to
17 the planning team, Ministry of Tourism and Recreation
18 individuals would be invited to attend planning team
19 meetings where there was specific tourism concerns
20 being discussed. But apart from that, there would be
21 the opportunities -- the four formal opportunities for
22 the public consultation which provide opportunities for
23 individual --

24 Q. I don't think --

25 MR. FREIDIN: Well, let him answer the

1 question, please.

2 MR. KENNEDY: Provides opportunities for
3 individual tourist operators if they were directly
4 affected or otherwise to make submissions to the
5 planning team.

6 MR. AXFORD: Q. I am going to try it
7 again then. Who negotiates for that particular lodge;
8 is there a person?

9 MR. KENNEDY: A. Well, it's -- if you
10 are asking: Is there a representative from the tourist
11 industry present on the planning team, the answer is
12 no.

13 MR. GROVES: A. I might be able to add
14 something to that. The fact is that as in that timber
15 management plan and subsequent timber management plans,
16 in that respect, the individual lodge owner or outpost
17 camp owner was the individual who negotiated with the
18 tourist industry and it was the Ministry of Natural
19 Resources that sat back, and if an agreement cannot be
20 reached that was satisfactory to their interest, then
21 we interfered -- or intervened, shall I say, but it was
22 the actual industry -- forest industry and the
23 individual lodge owner in that area that negotiated.

24 Q. Well, I am very pleased that you
25 brought that up. I would have great difficulty

1 bringing that out, but since you did I wonder if you
2 would tell me how successful those type of negotiations
3 are generally when MNR stays out of them?

4 A. I didn't say MNR stays out of them,
5 first of all.

6 Q. I think you said the individual lodge
7 owner negotiated with the forest industry?

8 A. Indirect initially.

9 Q. Yeah.

10 A. But they had to come to an agreement
11 that the Ministry of Natural Resources could accept and
12 in the next two management plans in Red Lake, which we
13 had a greater number of tourist outfitters involved or
14 affected by forest activities, there was generally
15 satisfactory agreement in all cases.

16 Q. Why would you say that the -- or
17 perhaps I am missing something in the plan that was
18 there and I just didn't read it, but why would you say
19 that the Ministry of Natural Resources would have to
20 accept what the two parties had already agreed to?

21 A. Because it's a plan that the Ministry
22 of Natural Resources is approving.

23 Q. Could you give me an example where
24 they might not accept what the two parties agreed to?

25 MR. FLEET: A. Yes, I could give you

1 probably several examples if you afford me the time.
2 There are all kinds of instances where forest industry
3 and tourism represent only two stakeholders groups in
4 the process and it is MNR's mandate to provide and
5 afford protection to not just those two stakeholders
6 but to all stakeholders including someone who can't
7 speak for themselves, including fisheries and wildlife,
8 and it may be that agreement reached between one
9 industry and the other does not provide the protection
10 that MNR themselves would seek to provide to another
11 non-present at the table. There are several examples
12 of that.

13 Q. Would any of you generally
14 characterize agreements between tourism operators and
15 wood industry operators as being more or less
16 successful? Could we get some opinion on that?

17 A. Could you rephrase that?

18 Q. I am trying to find out if these type
19 of negotiations outside of MNR generally work or
20 generally don't work. Does MNR generally approve them?

21 MR. KENNEDY: A. It's our view that they
22 generally do work and I can advise you that that is the
23 founding principle on which the terms and guidelines
24 have been developed which encourages discussion between
25 the parties that are directly affected, and I can think

1 of several instances where there has been what I would
2 characterize as successful discussions and resolutions
3 of concerns.

4 Q. Okay. When there is such a
5 discussion or resolution of a concern, is there any
6 different liability on either side than there would
7 have been originally with MNR?

8 For example, we talked about the line on
9 Little Vermilion and we talked about the fact that
10 there was no financial responsibility if the line was
11 breached. Does that change if the discussion goes on
12 with the wood operator?

13 A. I believe it would not.

14 Q. What has been the track record of
15 after these negotiations whether or not the lines ever
16 were breached? Can you comment on that?

17 A. No. I certainly can't give you an
18 opinion on the status of that over the entire province,
19 no.

20 Q. Okay. I think we will leave that for
21 just a minute here. I would like to -- I think I am
22 going to require some direction from the Chairman here.

23 MR. AXFORD: I notice on the planning
24 team committee that there is a person involved with
25 planning for fire. I am not sure where that leaves me

1 with regard to questions on fire.

2 THE CHAIRMAN: Well, I think you could
3 put some general questions to this panel. We've had a
4 witness on a previous panel that dealt specifically
5 with the planning involving, for instance, control
6 burns and that kind of operation. It's sort of a
7 planning process within itself, within the larger
8 planning process.

9 MR. AXFORD: The difficulty I have, so
10 that you understand - I can try a couple of questions
11 and see how we do here - but the difficulty I have is
12 that they are specific to the Red Lake area and I
13 waited for the Red Lake Plan to do this and I would be
14 trying to bring out the economics of fire.

15 I will just see what happens to it and I
16 guess you will have to rule me out of order if it
17 becomes --

18 THE CHAIRMAN: Mr. Multamaki may be able
19 to answer some of those questions and if he can't Mr.
20 Groves can and perhaps Mr. Kennedy can help.

21 MR. AXFORD: Sure.

22 THE CHAIRMAN: So why don't you try your
23 questions.

24 MR. AXFORD: Q. Okay, to Mr. Multamaki.
25 Could you give me any indication of the dollar or job

1 losses in that major Red Lake fire?

2 MR. MULTAMAKI: A. Offhand I can't
3 remember what the exact impacts of Fire 7 were. I know
4 there was a bit of an analysis done at the time that
5 the fire had taken place and, you know, it did have a
6 fairly significant impact on the Red Lake area, the
7 wild fire of 1986.

8 Q. Okay. And I think we had discussed
9 this at one point also, but was there ever any figures
10 published to indicate what the economic impact of that
11 fire was?

12 A. I think there were in the Fire 7
13 report, the audit that was done, I think there were
14 some figures of an economic nature that were published.

15 Q. The reason I am asking those
16 questions is that it doesn't come to mind to you very
17 quickly I gather, unless maybe I should just give Mr.
18 Groves a chance here.

19 A. Well, the reason it doesn't come to
20 mind is I can't remember the exact figures. I know
21 there were figures in there, I am just not sure what
22 they were.

23 MR. GROVES: A. Just to add to that.
24 There are usually some level of figures attached to all
25 fire reports, but I can't say that for Fire 7.

1 Q. Okay. Because we are working on
2 social economics, I am trying to suggest that perhaps
3 it's important that a person would have a feel for that
4 even if it isn't an exact number.

5 MR. MULTAMAKI: A. No. As I remember
6 it, we gave an estimate of the volumes of wood that
7 were burned, an estimate of the equipment that was
8 lost, for example one skidder that burned, an estimate
9 of the timber that had been cut and had burned, and an
10 estimate of the number of operators and the type of
11 operations that were impacted by that fire. Again, I
12 don't remember the exact figures at this point.

13 Q. Okay. How would you characterize the
14 opinion of the individuals involved with timber harvest
15 at that point when they were told to leave the area of
16 the fire?

17 A. Excited.

18 Q. Okay. And how would you characterize
19 the opinion of those individuals when they asked to go
20 back and get some of their machinery or some of their
21 wood?

22 A. They were I guess excited and
23 concerned.

24 Q. Okay. How would you characterize the
25 opinion of the tourist operators after you issued

1 NOTAMs?

2 A. Issued which?

3 MR. FREIDIN: What?

4 MR. AXFORD: It's NOTAMs.

5 THE CHAIRMAN: Notice to airmen.

6 MR. FREIDIN: I am just wondering whether
7 you can get the words on the record so I can understand
8 it.

9 THE CHAIRMAN: All right. Can somebody
10 explain what a NOTAM is?

11 MR. KENNEDY: NOTAM is a notice to airmen
12 which is issued by air traffic control officers which
13 advises aircraft in the vicinity of fires, in this case
14 to stay away from because of the visibility or reduced
15 visibility associated with smoke as well as the
16 increased air traffic associated with fire control or
17 fire suppression activities.

18 MR. MULTAMAKI: Okay. Could you repeat
19 your question?

20 MR. AXFORD: Q. Yes. How would you
21 characterize the opinion of tourist operators, say at
22 Douglas Lake, or some of the others nearby when those
23 NOTAMs were issued?

24 THE CHAIRMAN: Well, with respect, Mr.
25 Axford, what is the point of how they were

1 characterized? Obviously air traffic controllers have
2 a duty to perform as well, they issue these NOTAMs,
3 presumably there is a reason why they do it, and if the
4 people who are receiving those NOTAMs don't like what
5 they say; in other words, they would like to fly-in to
6 their tourist camp to recover whatever they are
7 supposed to be recovering or being with their property,
8 they may be excited, but so what?

9 MR. AXFORD: Okay. I think what I will
10 do in that case is we will wait until the Red Lake
11 hearing, but the point of this is that MNR did not
12 readily understand the economics of what they were
13 doing and I think we will have some testimony to that
14 effect.

15 THE CHAIRMAN: Very well.

16 MR. AXFORD: Q. Okay. In that case, I
17 think I am going to leave that area for a minute and I
18 would ask you to turn to Document No. 8, and it looks
19 like a 57A. It could be 67.

20 MR. FREIDIN: Exhibit 837, I think A,
21 heading Primary Road Planning 20-Year Period.

22 MR. AXFORD: B I think.

23 MR. FREIDIN: The second page which is
24 Primary Road Corridors.

25 MR. CHURCHER: That would be D, D as in

1 double.

2 MR. FREIDIN: That is 837D as in delta,
3 Mr. Chairman. Thank you, Mr...?

4 MR. CHURCHER: (indicating name plate)

5 MR. AXFORD: Q. I think this question
6 would go to Mr. Multamaki. On page D, the first
7 sentence under -- or heading under Primary Road
8 Corridors it says:

9 "Long-term "general direction" planning
10 of main access system."

11 Could you tell me what the long-term
12 general direction planning for roads in the Red Lake
13 area is?

14 MR. MULTAMAKI: A. Yes. I think we have
15 led evidence to demonstrate that it's our long-term
16 objective to access the northern part of the Red Lake
17 Crown, that area to the northwest of Little Vermilion
18 Lake.

19 Q. How did you establish that objective?

20 A. Basically with the production of the
21 eligibility map a large single block of eligible timber
22 was identified and this led to the identification of
23 the requirement for access into that area for future
24 supply.

25 Q. But what you are stating, if I can

1 say it correctly, is that it was based on forestry
2 principles?

3 A. Timber management principles were the
4 guiding direction for access into the timber resource
5 in that area.

6 Q. So the long-term general direction is
7 always based on where the trees are?

8 A. For timber access purposes, yes, if
9 we are only talking about timber access roads.

10 Q. Are there other people in the north
11 that make roads for other purposes?

12 A. Sure. Mines provide access to areas
13 of high mining potential or areas where a mine goes
14 into production. We have instances where native
15 reserves which require access for service purposes have
16 access established, recreational purposes such as
17 cottage lot sub-divisions and so on. So there is a
18 range of other resource parties or resource users that
19 do put in road access.

20 Q. I accept that, but I probably didn't
21 ask the question quite correctly. If there were a
22 hundred roads made in the north, how many of them would
23 be timber and how many would be other things? Are the
24 bulk of them timber?

25 A. The majority of them would be timber

1 I would say.

2 Q. Now, are you aware of any general
3 direction planning from any level of government having
4 to do with roads in the north?

5 A. I think I better pass that one on to
6 Mr. Bisschop.

7 Q. No. Because you wrote the plan and
8 because in writing the plan you have some obligation to
9 fit into the general principles, are you aware of any
10 plan for long-term general direction on roads?

11 A. Certainly within the timber
12 management planning framework there is long-term roads
13 direction. For example, in the Red Lake Crown Plan
14 it's recognized that there are four or five major
15 primary roads that will be in existence for a great
16 deal of time. We are talking about the Suffel Lake
17 Road, Dixie Road, Valhalla Road, Pine Ridge Road. So
18 if you are looking for long-term direction, yes, it is
19 in timber management.

20 Q. Right, in the timber management side.
21 I guess the question, Mr. Multamaki, is: Are you aware
22 that you -- did you attempt to integrate the timber
23 plans with, say, a road to Winnipeg or something along
24 this line? I am just trying to be very general.

25 A. Well, certainly that discussion did

1 come up as a matter of fact and the planning team
2 kicked it around for a great deal of time -- well, I am
3 not sure a great deal of time, but we did discuss that
4 issue about the road access to Winnipeg and I think it
5 was brought to our attention by the Chamber of
6 Commerce, or I think Mr. Sharpe the Reeve at the time,
7 that he made it quite plain that he was looking for an
8 access route out of Red Lake and when the connecting -
9 maybe he wasn't that adamant about getting out of Red
10 Lake - but we did discuss it and in fact where the
11 connection between Suffel Lake Road and the end of the
12 Long Legged Lake Road was it was understood that that
13 had the potential for eventual connection to the
14 Manitoba side and eventually Winnipeg should, you know,
15 a number of situations be addressed such as money.

16 It would have taken a great deal of money
17 to establish a link with Manitoba simply because of the
18 distance.

19 MR. MARTEL: Does the Ministry of Natural
20 Resources when it's putting in an access road approach
21 the Ministry of Transportation, for example, to
22 determine if they have plans in an area where in fact
23 you could combine the two, as opposed to each going
24 your own direction?

25 MR. KENNEDY: They are included on our

1 mailing list, Mr. Martel, and they are made aware of
2 the planning efforts being done for a management unit.

3 MR. AXFORD: Q. I think, without
4 prolonging it here, with a small town like Red Lake
5 with some importance attached for transportation links
6 for social and economic purposes it's a little
7 different process to get involved with timber managing
8 to deal with where you are going with roads, but you
9 have to. That is the point of that issue.

10 I would ask you then to turn to Document
11 No. 901 -- Exhibit 901. And what I am looking for, and
12 you don't have a page marked here, but I show it as
13 page 3 on here.

14 MRS. KOVEN: Mr. Axford, what was that
15 exhibit number?

16 MR. AXFORD: This is the comments of the
17 regional review team on the draft timber management
18 plan for the Red Lake Crown Management Unit.

19 THE CHAIRMAN: What page was that on 901?

20 MR. AXFORD: Page 3.

21 THE CHAIRMAN: 3.

22 MR. AXFORD: And for those of you who
23 don't have it, the question from the regional office to
24 the district office:

25 "Is the Township of Red Lake, Golden and

1 Madsen organized (eg. Reeve and Council)?
2 And if not why are these identified and
3 others left out (eg. Todd & Ball)?"
4 That are townships but don't have towns
5 in them.

6 "If the first assumption is correct you
7 would be more accurate to say...and
8 contains the 'organized' Township of Red
9 Lake, Golden..."

10 Q. The question to Mr. Multamaki. What
11 direction did you receive on recognizing the town as a
12 value?

13 MR. MULTAMAKI: A. I don't think there
14 was any question that the entire planning team
15 recognized that the towns -- the areas, both organized
16 towns and the unorganized townships, were a value to
17 the area. They were inhabited by people and there was
18 no formal, I guess, directions stating that you have to
19 recognize the towns as a value, that is pretty well
20 understood. Well, I guess it is understood by all the
21 planning team members that the townships are in fact
22 and the towns are a value within the area.

23 I would also like to point out that in
24 the physical description in the plan there is a section
25 that describes the township and the local area, the

1 areas of population. So I think it was recognized that
2 in fact it was recognized as a value.

3 Q. Okay. Then, in that case, how did
4 you see that value, because it had people in it or
5 because there were -- did you have anything to do with
6 economics in the town, did you think about jobs or how
7 did you see it as a value?

8 A. We recognized it as containing a
9 whole host of range of values, you know, everything
10 from an area -- the area of population with respect to
11 residents, with respect to service industries, with
12 respect to habitation, with respect to, you know, the
13 whole works and, you know, I don't think we singled it
14 out or made a list -- well, we didn't make list of all
15 the individual values that a town contains. I think
16 that would be stretching the...

17 Q. But you did recognize it as a value?

18 A. Sure.

19 Q. Who negotiated for that value?

20 A. I guess the planning team was the
21 primary vehicle for addressing the concerns that would
22 have come up immediately adjacent to the town.
23 Certainly the Township and the Chamber of Commerce had
24 the opportunities for public participation and public
25 review and in fact did take advantage of those

1 opportunities at things like the information centre and
2 so on.

3 Also they were in contact with the
4 district manager and through the district manager the
5 planning team on a number of occasions with respect to
6 what was taking place both generally in the resource
7 management field and at times specifically with respect
8 to timber activities in the Red Lake District.

9 Q. But I think I asked you who
10 negotiated for it in the planning team? You have told
11 me that the town had an opportunity to comment on the
12 work, but I asked you who negotiated for it?

13 A. I guess that was a responsibility
14 that would have been a general duty of all of the
15 individuals on the planning team. I am not sure that
16 any single individual was in fact singled out.

17 Q. Were any of those individuals on the
18 planning team responsible to the town; for example,
19 were they elected or appointed by the town?

20 A. No, they were not.

21 Q. Okay. I guess I am going to turn
22 then to -- you will have to give me some help here.

23 MR. FREIDIN: 814.

24 MR. AXFORD: To page 32.

25 MR. FREIDIN: Book 1.

1 MR. AXFORD: Q. We had this page out the
2 other day. It's 4.8.6 under Employment Objective.
3 Since I am talking about towns, I wonder if you had any
4 further thought on how the mathematics of that thing
5 went at the bottom?

6 MR. MULTAMAKI: A. How the which went?

7 Q. On the bottom of the page there is a
8 calculation of how many jobs and what price per job.
9 Has there been any further thought taken on that, or am
10 I left with the mathematics I had the other day?

11 A. I think you are left with the
12 mathematics you had the other day. As I stated
13 previously, it was an estimate based on discussions
14 with the local operators and so on and you have to
15 recognize that it's not like selling a pound of nails.

16 A pound of nails generally costs exactly
17 the same thing in each store throughout the city; when
18 you talk about woodflow, you may have different values
19 for woodflow and you really start dealing in averages
20 and generalities and really that is what we are talking
21 about here is an estimate of the value of wood and the
22 number of jobs associated with that value of wood and
23 it occurred through discussions with the local timber
24 operators.

25 Q. Okay. The only reason I brought the

1 question up again, Mr. Multamaki, is I forgot to ask
2 you: What are your qualifications, what are your
3 qualifications to make that estimate?

4 A. I guess if you are looking for
5 qualifications, the estimate really was made or was a
6 combining of the actual facts that were out there with
7 respect to the timber operators.

8 I guess I was the individual that simply
9 assembled that data, asked the questions, assembled the
10 data and came out with the number and really I guess
11 the question was: What were the qualifications of the
12 timber operators for hiring people who are harvesting
13 wood or making the decision on how much they would pay
14 for those jobs because they were really the ones that
15 provided the information that I assembled.

16 MR. AXFORD: I congratulate you for
17 making an effort to make the estimation, but I think we
18 would bring some evidence when we come to Red Lake of
19 what those estimates actually meant on the ground and
20 it's very difficult in cross-examination to bring that
21 out, but I think the point is relatively clear from Mr.
22 Multamaki's earlier testimony that he doesn't have
23 qualifications in economics and there may be another
24 school of opinion on those numbers and the numbers are
25 used in here to try and achieve certain objectives

1 because we have set out objectives in the course of
2 trying to manage this wood and that was one of the
3 objectives.

4 So we have a professional forester making
5 economic judgments.

6 Q. Okay. I would then go to the next
7 page in that same book and I am going to ask you to --
8 as you have that open, to take out Exhibit 889 and I'm
9 looking for a comparison of the bottom of page 33 with
10 the comments under Exhibit 889.

11 MR. FREIDIN: 889, the title page says:
12 West Patricia Land Use Guidelines.

13 MR. AXFORD: (indicating)

14 I show it as the second page of 889,
15 there is a colour page and then the inside page shows
16 B, Land Use Policy.

17 Q. And what we are talking about is zone
18 No. 22 at the top of the page covering Little Vermilion
19 which if anybody on the panel wants to disagree with me
20 you better say so, but Little Vermilion is a big
21 chunk of the area of the Crown management that we are
22 talking about, and it calls for a land use policy where
23 the primary use of the area is commercial tourism. And
24 it fits right in here:

25 "Where conflicts arise...the tourism

1 sector will receive priority."

2 It says right in here at the beginning of
3 the question. Now, I wonder if Mr. Multamaki can tell
4 me how that fits with page 33, 4.9.1.2 Road Access,
5 Item No. 1 and No. 4?

6 MR. KENNEDY: A. First of all, Mr.
7 Axford, when you comment on that tourism sector where
8 we see priority, I believe that is referring to the
9 full statement which reads:

10 "Where conflicts arise with the sport
11 fish based commercial fishery and
12 commercial tourism, the tourism sector
13 will receive priority."

14 Q. Okay. Maybe I should just read the
15 last statement there. I could have read the whole
16 thing:

17 "Although timber harvesting will be
18 permitted, strict controls on operations
19 relating to access and aesthetics will be
20 enforced."

21 MR. MULTAMAKI: A. Yes. And in fact
22 that was considered by the planning team when this plan
23 was developed. If you turn to page 121 of Exhibit 814,
24 that is Book 1 of the Red Lake Crown Plan, page 121.

25 Q. Mm-hmm.

1 A. There is a section entitled 10.2 Five
2 Year Road Access.

3 Q. I must have the wrong page 121 then.
4 It's unfair to have two page 121 in the same book. Go
5 ahead.

6 A. Okay. Under 10.2, Five Year Road
7 Access, the third paragraph, which is the largest
8 paragraph on that page, it deals very specifically with
9 the road access constraints placed on roads in the
10 Little Vermilion Lake area.

11 That in fact is part of the method with
12 which we deal with this strict controls on operations
13 relating to access and aesthetics will be enforced that
14 you talk about in the West Patricia Land Use Plan. In
15 fact what we have done is we have placed strict
16 controls on road access which is in keeping with the
17 West Patricia Land Use Planning Guidelines and in fact
18 the two do agree.

19 Q. I have no problem with that. The
20 question I have for you - and if you want to use that
21 one instead of this exhibit here, No. 889 - all I am
22 trying to illustrate is that there is a conflict of
23 objectives -- or maybe I shouldn't say, I would ask you
24 if the objectives in page 33, Item No. 1 and No. 4 are
25 not possibly in conflict with the one you have just

1 mentioned? Is it possible to do both?

2 A. I think that is exactly it, that it
3 is in fact possible to do both simply because the
4 strict controls happen to be closed roads, it does not
5 negate the fact that road access for timber harvesting
6 or timber activities is in fact taking place. So the
7 two I would say are complimentary.

8 Q. And what I am looking for here is: I
9 have no problem with the paragraph you illustrated on
10 page 121, that is fine, I am trying to illustrate that
11 the objectives on page 33 and 34 don't square with the
12 way you have treated it under 121.

13 I am quite happy with 121, but it's
14 relatively difficult to reach that 121 with the
15 objective you set out on 33 and 34. I was hoping for
16 some comment on that.

17 A. If I could just have a second, Mr.
18 Axford, to review that I could perhaps give a more
19 complete answer.

20 THE CHAIRMAN: Ladies and gentlemen, I
21 think we are going to take a 10-minute break at this
22 time.

23 We are with one court reporter, as you
24 probably noticed. The other reporter unfortunately is
25 ill in Toronto and, therefore, we are going to take

1 more breaks than normal because it is very trying and
2 difficult for one reporter to handle the amount of
3 testimony that is coming in in connection with this
4 hearing.

5 So we will break for 10 minutes and then
6 come back. Thank you.

7 ---Recess taken at 9:35 a.m.

8 ---On resuming at 9:50 a.m.

9 THE CHAIRMAN: Thank you be seated,
10 please.

11 Mr. Axford?

12 MR. AXFORD: Q. Mr. Multamaki, you were
13 refreshing ourselves on what the objectives were there.

14 MR. MULTAMAKI: A. Certainly. I just
15 wanted to make sure that Mr. Freidin was ready and
16 available.

17 MR. FREIDIN: Thank you.

18 MR. MULTAMAKI: Yeah. I think really the
19 issue that we are talking about is in fact whether the
20 Red Lake Plan, the statements made in there under the
21 objectives and strategies, particularly under the
22 strategies, conflicts with what was stated in the West
23 Patricia document and, in fact, when you look at the
24 West Patricia document the last line it states:

25 "Although timber harvesting will be

1 permitted, strict controls on operations
2 related to access and aesthetics will be
3 enforced."

4 And when you look at the strategies that
5 you were talking about on page 34 of the plan, the
6 bottom line there is -- I apologize 33, we deal with a
7 timber management strategy for access and in fact those
8 strategies are to develop complete access on the Red
9 Lake Crown Management Unit in conjunction with the
10 strict access controls, for example in the Little
11 Vermilion Lake area. So in fact the two are
12 complimentary.

13 And to carry that one step further, what
14 is physically taking place on the ground is that the
15 roads are being built for timber management purposes
16 and they are in fact closed to the public under the
17 Public Lands Act such that the strict access controls
18 are in fact in place. So the two documents in fact
19 compliment each other.

20 MR. AXFORD: Q. Okay. What I am looking
21 for then, Mr. Multamaki. I wonder if you would have
22 found it somewhat difficult as a planner dealing with
23 the West Patricia Land Use Plan that had not really
24 been approved to almost do land use planning in the
25 process of building roads and this type of thing?

1 MR. MULTAMAKI: A. I think it's fair to
2 say that having had approved guidelines and plans would
3 have made the job I guess somewhat easier; however,
4 that is not to negate what in fact did take place and
5 the fact that we did have access to a lot of the
6 background information and data that was collected
7 during the planning process.

8 Q. And again, I would be the first to
9 congratulate you for the effort that you made doing the
10 timber management plan without the benefit of a land
11 use plan, but I would want to point out that the
12 qualifications of the individuals writing the plan, you
13 have readily admitted as a forester, don't necessarily
14 qualify for doing land use planning, and that is in
15 effect what you were doing.

16 A. I don't think that that has been
17 said. I think the qualifications that you were
18 referring to earlier were the socio-economic ones.

19 MR. FLEET: A. Mr. Axford, the timber
20 management planning process, as the Ministry has put
21 forward, has as its cornerstone a multi-disciplinary
22 planning team. The forester is put forward as the
23 author. In numerous meetings he will gain abundant
24 access to a variety of disciplines on that team and
25 those disciplines and those representatives by and

1 large would be the same as that available to somebody
2 going through the district land use planning process.

3 Q. Well, you may feel that way. I am
4 not prepared to accept that yet because if we are
5 dealing with a team that is essentially chaired by a
6 forester, the other people really have to come to the
7 counter and I think that is the issue.

8 A. Not all planning teams. In fact I
9 would say only some planning teams are chaired by
10 foresters, many are chaired by district managers, many
11 of those are not foresters.

12 Q. Okay. And that takes us back but I
13 am not going to spend any more time on the issue where
14 the planning team comes from. I would like to -- I
15 think we want -- I have got it as Volume 1, pages 1 to
16 523. Do you have a tab on this?

17 MR. FREIDIN: Volume 813A. What page?

18 MR. AXFORD: Page 213. A number of other
19 individuals have covered this page but I want to do it
20 one more time, and I think quickly.

21 Q. Can anyone tell me on page 213 what
22 we have as a current list of values, if there has been
23 any qualitative or quantitative analysis of the value,
24 or if there is any relative weighting of the values;
25 for example, is a garbage dump equal to a tourist camp

1 or is a moose lick equal to a mine. Anybody?

2 MR. KENNEDY: A. Yes. There has been no
3 weighting or qualitative ranking of these values or
4 resource features.

5 Q. Mr. Kennedy then, since you stuck
6 your neck out, would you consider that perhaps there
7 might be in the future some qualitative or quantitative
8 analysis of these values?

9 A. I can't see that happening in the
10 foreseeable future, no.

11 Q. Okay. I think that is adequate to
12 suggest that there isn't and there won't be. I think I
13 want Document 700 next that everybody is familiar with.

14 And for Mr. Kennedy. On planning teams
15 under the planning process Schedule A, Item No. 1, I
16 tried to illustrate that there is a difference between
17 the expertise of the stakeholders on economics and on
18 socio-economics. And I wonder if you would consider
19 any type of a community based representation on that
20 team, perhaps elected or appointed?

21 A. We have given considerable evidence
22 on the makeup of the planning team and as full planning
23 team members it's the Ministry's position that we do
24 not feel that necessary. We have included advisors
25 from time to time and we do use advisory groups on some

1 management plans across the province as the need has
2 arisen.

3 Q. That is fine. I thought that was
4 what your answer would be.

5 Mr. Multamaki, on page 4, about a little
6 past halfway down the page after Item (c) it calls for
7 direct verbal communication of the required
8 information. Did you in fact have some instructions to
9 not only to communicate by letter but to get out and
10 talk to people about this?

11 MR. MULTAMAKI: A. Do you mean during
12 the preparation?

13 Q. During the preparation of the Red
14 Lake Plan.

15 A. Yes. I think that it's fair to say
16 that during the plan preparation the planning team was
17 asked or required to, you know, discuss the various
18 activities that were proposed to take place or that
19 were out there with the various stakeholders and
20 groups. The district manager wanted us to, you know,
21 continue communicating with the --

22 Q. How did you feel about that? When
23 you did it, did it seem to work for you?

24 A. Well, as you know, Red Lake is a
25 relatively small community, everybody generally knows

1 everybody else in some fashion or another and it was
2 quite common, you know, to discuss a lot of the
3 activities that were taking place in an informal
4 environment both within the office and out on the
5 street, so to speak.

6 Q. Did you find that process helpful?

7 A. Certainly. I think that there is no
8 question the Ministry, myself included as a member of
9 the Ministry, had an understanding of where the
10 majority of stakeholders were coming from and what
11 their concerns and so on were.

12 It was quite common, for example, for you
13 and I to have discussions in your store for example or
14 at the post office or whatever and, on a number of
15 occasions, I think you made your views fairly plain.

16 Q. Okay. The reason I asked the
17 question is, I agree with you that that informal
18 process initiated by the district manager was very
19 helpful and I would ask you: In reviewing this Exhibit
20 700 if you see any kind of a way that that sort of
21 process would likely go on in somebody else's timber
22 plan?

23 A. It has been my experience that there
24 is a great deal of informal discussion particularly
25 with the various stakeholders that are affected by

1 timber management operations on a unit, and I think
2 that goes without saying that that is fairly common
3 right across the area of the undertaking.

4 Q. Let me try it again. If we agree
5 with the terms under 700 are we likely to see that
6 beneficial process that you went through - and you may
7 not be doing it again for Red Lake or for some other
8 town - but would the next individual benefit from your
9 knowledge of that piece of the process, would it be
10 shown in here that they are likely to do the same kind
11 of thing?

12 A. I think it's very likely that they
13 would be doing a similar, I guess, communications
14 program as I did as a unit forester. It would still --
15 now, the next unit forester would still be discussing
16 the activities with the various stakeholders and so on.

17 Q. Well, I hope it does, but does it say
18 so to do it?

19 MR. GROVES: A. Mr. Axford, at least in
20 my opinion, that is what is happening, that is what is
21 continuing to happen. It has happened in the six
22 management plans that I have been involved with.

23 Mr. Multamaki's replacement, Mr. Sidders,
24 is out there actively now doing the same thing again.
25 I don't think -- it's one of those things that is

1 happening and will always be happening.

2 Q. I agree with you, that is the part of
3 the process that works, it works well. I am trying to
4 get somebody to show me in here where it says --

5 THE CHAIRMAN: Mr. Axford, are you asking
6 in effect for a mandatory condition that this informal
7 communication process--

8 MR. AXFORD: I sure am.

9 THE CHAIRMAN: --be required of the
10 Ministry by way of a condition?

11 MR. AXFORD: I sure am. The problem is
12 that I am trying to get them to show me if it's in here
13 or not and I guess it's not.

14 MR. FLEET: Sir, you pointed it out. It
15 would be my interpretation that that paragraph you
16 pointed out, that that direct verbal communication with
17 required modification is indeed that direction, and
18 some measure of that direction is also provided in the
19 Class EA Document I believe.

20 THE CHAIRMAN: Well, I guess in order to
21 just sort of shorten up this line of questioning, I
22 suppose, Mr. Axford, you will be suggesting--

23 MR. AXFORD: Yes.

24 THE CHAIRMAN: --a specific condition to
25 be included when we reach Red Lake?

1 MR. AXFORD: Sure. Okay.

2 Q. Page 5, Item No. 6, it's talking
3 about the map here and the values map and I'm back to
4 the question we were talking about with the different
5 kinds of values.

6 Mr. Kennedy, would you consider putting
7 this community that is dependent on the resource on
8 that map?

9 MR. KENNEDY: A. I think they already
10 are in the sense that they are identified as patent
11 land and on most of the maps that we use to portray
12 values information it's quite clear that the community
13 base is shown there.

14 Q. Can I not get it through to you that
15 a community is more than patent land.

16 MR. FREIDIN: Nobody said -- he said that
17 the towns you are talking about are identified on maps
18 which indicate in part patent land.

19 MR. AXFORD: I think I have made the
20 point.

21 Q. Page 7, Item 1. Mr. Kennedy again,
22 would you consider saying anything that would direct a
23 benefit to a particular geographical area; for example,
24 it was illustrated in the Red Lake Plan that there was
25 an effort to try and generate local employment. Would

1 you consider adding that in here?

2 MR. KENNEDY: A. First of all, did you
3 make reference to paragraph 11 on page 7?

4 Q. Under the -- actually I really want
5 to reference 10, 11, 12, I think it's the group of them
6 having to do with the planning, the whole operation. I
7 notice that that reference is made under the Red Lake
8 Plan. I am trying to see if it could be done under
9 more than one plan.

10 A. I think that it is fair to suggest
11 that a statement that the results of the timber
12 management plan will contribute to job creation or
13 maintain jobs in a community but I can't see it going
14 beyond that.

15 Q. But you are not prepared to consider
16 that the planning process should attempt to mitigate
17 the development of the area in which it's working?

18 A. I am sorry, I don't understand the
19 question.

20 Q. Okay. I am asking you if in the
21 planning process that you are prepared to have a plan,
22 a hypothetical plan attempt to promote development of
23 that area. Can we use the resource of timber as a
24 development tool? Are you prepared to make any kind of
25 commitment in there like I saw in the Red Lake Plan

1 that said, where we are attempting to do more
2 employment, we are attempting to help the mines in this
3 way.

4 A. I would suggest that by the very
5 nature of the plan outlining the kind of activities
6 that will occur over the five years right through from
7 harvesting through to renewal and maintenance
8 activities, road construction, that there is an
9 indication of the work effort that is forecasted to
10 occur over the five-year term and, in that regard, it's
11 an indication of the kind of job opportunities that
12 will either be maintained or in fact promoted.

13 Q. Okay. To shorten that, we are
14 prepared to introduce at Red Lake that we want to see
15 some kind of use of that resource to do economic
16 development.

17 Page 8, No. 15. Would you consider -
18 again to Mr. Kennedy - more planning for regional
19 linkups, more integration with Ministry of Transport,
20 more integration with economic development objectives
21 in the construction of roads, or would you consider it
22 in a more formal way than I see here?

23 A. You are referring now to access road
24 construction?

25 Q. Sure.

1 A. Off the top of my head I can't think
2 of any submissions made by either ministry involved in
3 access where they have asked for such involvement and
4 the fact that we are managing the timber resource and
5 we are planning access for timber, I don't see that it
6 would be necessary to go any further than we already
7 have, which is to involve the local regional offices of
8 those organizations.

9 MR. DAVISON: A. Mr. Axford, if I could,
10 just a few points here. I think Manitouwadge is in a
11 very similar situation to Red Lake in that it's at the
12 end of the road. Manitouwadge for years has been
13 trying to hook up with the communities of Longlac or
14 the community of Hornepayne.

15 What the community did was they asked
16 that all the logging operators, the Ministry of Natural
17 Resources come in and discuss their plans, the timber
18 plans, where they were going to go and then following
19 that they were the proponents and they contacted
20 Ministry of Transport to talk about if they would look
21 at funding a linkup.

22 Q. Well, I appreciate that, Mr. Davison
23 and I couldn't agree with you more, that is an
24 excellent example of what I am trying to illustrate, is
25 that the initiative has to come from elsewhere, and in

1 spite of an overriding social and economic need for a
2 road MNR said: Come to my counter, we are not going to
3 do it unless you beat us up a little bit. And I am
4 asking Mr. Kennedy if you could --

5 MR. FREIDIN: They didn't say that.

6 MR. AXFORD: No, sorry. Excuse me.

7 THE CHAIRMAN: Well, Mr. Freidin, don't
8 get yourself too upset.

9 MR. FREIDIN: I'll bite my tongue.

10 MR. AXFORD: I'll bite my tongue too.

11 Q. Mr. Kennedy, is it possible that you
12 would consider more of a perhaps informal process that
13 perhaps we talked about for the planning within the
14 Town of Red Lake as Mr. Multamaki has suggested?

15 Would you consider such an informal
16 process within MNR and the planning, that they do
17 undertake some discussions with the Ministry of
18 Transport or Ministry of Northern Development in order
19 that the work they do -- they have got the bucks on the
20 road issue and the roads are essentially being made for
21 timber, would you consider that you might have a role
22 in running those levers of economic development for the
23 benefit of the community there?

24 MR. KENNEDY: A. For the benefit of the
25 communities you said. I would suggest that when we are

1 dealing with the planning of timber access roads that
2 once the locations have been determined and the plan is
3 being implemented that Ministry of Natural Resources
4 and forest industry staff look at a variety of sources
5 of funding to have the roads constructed. That
6 includes Ministry of Transportation operations as well
7 as Ministry of Northern Development and Mines and, as
8 such, I would say that there is discussions that take
9 place in regards to funding road proposals and the
10 proposals that would be being put forth in this case
11 would be roads that had been planned for timber access
12 purposes -- excuse me, timber management purposes.

13 Q. Well, I think that is fair enough to
14 illustrate what MNR's position has been in the past and
15 what it's probably going to be in the future again.

16 I would ask you to turn to page 9, Item
17 (b)(i) and again, for Mr. Kennedy, I think. Do I
18 read -- have I missed or does it fail to say economic
19 in there anywhere? It says the environmental analysis
20 of the alternatives.

21 MR. BISSCHOP: A. Mr. Axford, when we
22 use the term environmental, we use it in the sense as
23 the word environment is defined in the Act and that
24 includes the total environment including social and
25 economic concerns.

1 Q. That is fair enough.

2 MR. AXFORD: And I think that is my point
3 also, that it does include economic and that it's
4 difficult to include economic when the attitude has
5 been solely for timber harvest. There are other things
6 that can be done.

7 THE CHAIRMAN: Well, Mr. Axford, you are
8 going to have an opportunity in your side of the case
9 to make those points.

10 MR. AXFORD: Okay.

11 Q. Page 12, Item (g). Page 12, Item
12 (g). We were talking a little while ago about the
13 difficulty with the line change on Little Vermilion
14 that really is no responsibility -- I suppose
15 responsibility, but no financial responsibility. Under
16 Item (g) is there any such thing as any one side or the
17 other being awarded costs on a bump-up?

18 MR. FREIDIN: No.

19 MR. KENNEDY: Not that I am aware of.
20 There is no -- there is nothing built into the timber
21 management planning process which establishes
22 liabilities and --

23 MR. AXFORD: Q. That is exactly what I
24 am looking for. Would you consider that there is any
25 need to establish liabilities at any point?

1 MR. KENNEDY: A. I would suggest that
2 that is a legal matter that none of the panel members
3 would be able to comment on.

4 Q. Would you --

5 MR. FREIDIN: There is some question as
6 to whether this Board can in fact impose a term and
7 condition that can give rise to that sort of result.

8 MR. AXFORD: Q. All right. Without
9 getting into the legal side of it, have you ever
10 noticed that in the course of trying to negotiate an
11 area of concern that one individual or another appears
12 unnecessarily to be dragging their feet?

13 MR. KENNEDY: A. Yes, I have.

14 Q. Would any kind of an incentive be of
15 any assistance to hurry them along?

16 A. I think you would have to be a little
17 more illustrative in your question if you want an
18 answer.

19 Q. If there was anything at risk for the
20 person dragging their feet, would they be more likely
21 to make an agreement?

22 A. You are suggesting that we afford
23 them some salary dollars during the discussion period?

24 Q. No, I am not suggesting any
25 particular manner in which costs would be afforded, I

1 am just saying, if there was some dollar bill attached
2 in some way, shape or form would they be less likely to
3 drag their feet?

4 A. Again, -- I'm sorry, I'll have to ask
5 you to repeat the question.

6 Q. Okay. You know there have been a
7 number of negotiations over areas of concern.

8 A. Yes.

9 Q. Now, let me be more specific and make
10 it easier now. I'll give an example.

11 A. Thank you.

12 Q. "x" person has a lodge somewhere,
13 they think they need a five-mile buffer essentially - I
14 shouldn't say buffer - five-mile no-cut limit. The
15 wood industry comes along and says: Well, you know, we
16 could protect your values and, you know, you only
17 really need a half a mile, somewhere in there.

18 There is a negotiation process, the
19 tourist operators can drag their feet to an infinite
20 degree and cause all kinds of stink and that sort of
21 thing and there is nobody at risk except the timber
22 company hasn't got any timber to cut.

23 Is there any mechanism or can you suggest
24 that it would be worthwhile having any pressure on
25 either side to come to the negotiation; pressure might

1 not be money, pressure might be MNR making a
2 determination on their own.

3 A. Well, I think that when you say
4 pressure, that there is some pressure in the sense that
5 in a timber management plan we are making the
6 assumption that the plan is being produced for that
7 area, there is stands that have been allocated for
8 harvest and there is a discussion occurring, as
9 suggested in the tourism guidelines, with the two
10 parties that are directly involved trying to resolve
11 their differences.

12 And I think in that very sense that there
13 is some pressure in that there will be a decision made
14 in the timber management plan presumably with the
15 involvement of those individuals that are directly
16 involved.

17 Q. All I am looking for there, and we
18 would be coming back with terms and conditions that
19 illustrate it, is it appropriate to have some type of
20 pressure? What that type of pressure is --

21 THE CHAIRMAN: Well, there is pressure in
22 what I think Mr. Kennedy is alluding to in the sense
23 that there is a defined time line for the presentation
24 of the plan, there is negotiations that go on, but if
25 the negotiations, as we understand it, are not

1 successful by such and such a time, then decisions are
2 made. And, therefore, there is the incentive I would
3 suggest for the parties to either reach accommodation
4 on their own or see some kind of decision imposed which
5 may not be in accordance with what they want.

6 MR. FREIDIN: Sounds like...

7 THE CHAIRMAN: That applies to everything
8 obviously except this hearing.

9 MR. AXFORD: I think in the same manner
10 of this hearing, these things do go on leg to leg
11 levels and it's a difficult problem and unless there is
12 some incentive to come to agreement --

13 THE CHAIRMAN: Like the power to award
14 costs or not?

15 MR. AXFORD: Yes, that type of thing. It
16 may be like the power to award costs, but perhaps not
17 that power. So I don't get myself in a legal mess
18 there.

19 THE CHAIRMAN: Well, we know all about
20 not having the power.

21 MR. AXFORD: Okay. I think at that point
22 I would like to leave that document and all I want to
23 illustrate -- I am going to close here.

24 I just really want to illustrate that in
25 the cross-examination that we have done that there is a

1 difference between the processing and the extracting
2 community and that MNR has difficulty with the process
3 and the experience to deal with the economics -- the
4 social economics of that extraction community in a
5 positive way, and not only is it difficult to address
6 in the past but in the future it doesn't show in the
7 planning process that they have an obligation to deal
8 with it.

9 And I think on document - if I can get it
10 here - it looks like 853. Do you want to check that.
11 It's really hard to read again, this. (indicating)

12 MR. FREIDIN: 853.

13 MR. AXFORD: Item No. 2, it's at page A.
14 Item No. 2 indicates that MNR in their opinion has a
15 professional judgment. And all I am trying to
16 illustrate is that the professional judgment is very
17 professional in the forestry side but it is
18 substantially lacking in the socio-economic side and,
19 as a result, it's extremely difficult to make those
20 economic balances when the individual or individuals on
21 the planning team don't necessarily have the background
22 in economics or in social economics.

23 And I think the other thing that I would
24 like to mention is that the Board under the Ontario
25 regulation here, I think --

1 THE CHAIRMAN: The Rules of Practice you
2 are referring to?

3 MR. AXFORD: Yes. What it says is you
4 have got a little room to move and I think right here,
5 Item No. 4 and 5.

6 All I'm trying to illustrate is that you
7 do have the power to insert the socio-economic aspect
8 into timber management planning and I would wish that
9 when we come with those terms and conditions that we
10 want that you would do so.

11 THE CHAIRMAN: Thank you, Mr. Axford.

12 Well, ladies and gentlemen, we are now up
13 to the point in time where we can start the Ministry of
14 the Environment's cross-examination.

15 Do you need a few minutes, Mr. Campbell,
16 to change places?

17 MR. CAMPBELL: I think that would be
18 helpful. Thank you, Mr. Chairman.

19 THE CHAIRMAN: All right. We will take
20 10 minutes at this time.

21 ---Recess taken at 10:20 a.m.

22 ---On resuming at 10:35 a.m.

23 THE CHAIRMAN: Be seated, please.

24 Mr. Freidin?

25 MR. FREIDIN: A couple of undertakings

1 that I would like to address, Mr. Chairman, we are
2 hopeful to be able to address all of these in very
3 short order, but two.

4 One was a question arising in relation to
5 the Red Squirrel Road and whether in fact the FEPP
6 applied in that particular case. The answer is yes.

7 We were asked to provide a copy of the
8 project summary and the environmental checklist, if
9 they were in fact prepared. Is that the right term,
10 the summary report, Mr. Bisschop?

11 MR. BISSCHOP: Yes, project summary.

12 MR. FREIDIN: Project summary. Such
13 documentation were prepared and I'll file those at this
14 time. (handed)

15 THE CHAIRMAN: Thank you.

16 MR. FREIDIN: The first document is the
17 project report and the--

18 THE CHAIRMAN: I think we are up to 910,
19 Exhibit 910.

20 MR. FREIDIN: --environmental checklist
21 is the last document.

22 THE CHAIRMAN: So we will file all of
23 these under the one exhibit number?

24 MR. FREIDIN: Yes, I would suggest we do.

25 THE CHAIRMAN: Thank you.

1 MR. FREIDIN: Just refer to it as project
2 summary and environmental checklist, Red Squirrel Road.

3 ---EXHIBIT NO. 910: Project summary and environmental
4 checklist re: Red Squirrel Road.

5 MR. FREIDIN: The other matter I would
6 like to address, Mr. Chairman, it arose during a
7 discussion I guess between you and Mr. Bisschop
8 regarding bump-up and term and condition 25(g) as to
9 whether in fact a contingency plan could in some how
10 circumvent the intent of a bump-up request; and, that
11 is, to prevent activities occurring in a certain place
12 and in a certain manner.

13 We have taken a look at 25(g), we agree
14 there is some ambiguity. We will amend that term and
15 condition to make it clear that it is not the intention
16 of the Ministry to have contingency plans in fact
17 circumvent that.

18 If I might, I have a draft wording and it
19 might be clearer to what in fact we are going to be
20 driving at, and this will be cleaned up, but basically
21 we would add the following to that term and condition:

22 Partial or conditional approval of a
23 TMP cannot authorize the implementation
24 of any activities which are the subject
25 of a bump-up request which has not been

1 denied by MOE or which has resulted in an
2 individual environmental assessment being
3 required. In addition, a contingency
4 plan as contemplated by term and
5 condition No. 19 is subject to the same
6 limitation.

7 Now, that is draft, but I think that
8 indicates the intent that we will try to in fact make
9 sure is conveyed clearly when we provide the amendment
10 to our draft term and condition 25(g).

11 THE CHAIRMAN: Very well. Thank you.
12 Mr. Campbell?

13 MR. CAMPBELL: Thank you, Mr. Chairman.
14 The first matter which I want to deal with today has to
15 do with MOE involvement in the planning teams. We have
16 an outstanding obligation to report to you on this
17 matter. I think it is fair to say that during
18 cross-examination two issues arose regarding MOE
19 involvement with planning teams for timber management
20 plans.

21 Those issues were, first, whether MNR
22 should be required to provide to MOE specific notice of
23 the commencement of each timber management planning
24 process; and, second, the question of whether MNR
25 should extend an open invitation to MOE to permit MOE

1 at its discretion to be a member of a timber management
2 planning team from start to finish.

3 With respect to the first item it would
4 be our submission, I believe it's concurred in by MNR,
5 that there is no need for such notice in that if draft
6 term and condition No. 5 is approved by this Board that
7 matter is already addressed, and certainly from MOE's
8 perspective it's addressed quite satisfactorily. That
9 term and condition speaks to providing a list of all
10 plans to be prepared over the next year.

11 Now, in relation to Item No. 1 -- rather,
12 in relation to need for item No. 2 rather, on October
13 10th I indicated that MOE's position was that it would
14 be beneficial if MOE could from time to time at its
15 discretion be a member of a planning team from start to
16 finish.

17 Now, since making those remarks we have
18 discussed the matter with Mr. Freidin, we have
19 discussed the evidence of MNR which describes the
20 distinction made between members of a planning team and
21 advisors to a planning team, the important distinction
22 perhaps being that members are limited to MNR staff
23 and, in the case of company-prepared plans, the
24 company's forester as well.

25 MNR has explained that the main reason

1 for that distinction is that they feel they, being MNR,
2 are accountable for the decisions made in that process,
3 they carry the direct responsibility and that, while
4 members are expected to attend all planning team
5 meetings, there are additional obligations; for
6 instance, it's not uncommon for members of the planning
7 team to have responsibilities for writing portions of
8 the plan.

9 Now, the position that MOE is putting
10 forward to the Board on this matter is that, given
11 those particular responsibilities that go with
12 membership, it isn't desiring really either membership
13 on a planning team or advisor status; rather what MOE
14 wishes the opportunity to have an MOE representative at
15 his or her discretion attend timber management planning
16 team meetings, receive all documentation that is
17 distributed to the members of the planning team and to
18 participate fully in discussions of the various subject
19 matters addressed at that team's meetings. And, of
20 course, that involvement would be on advance notice to
21 MNR because it would be in response to the list of
22 plans that were going to be prepared.

23 Now, I think it's also important for the
24 Board to understand that we believe that position is
25 appropriate and that the purpose of the request is that

1 MOE has some decision-making responsibilities on
2 bump-up requests and, as such, MOE believes that the
3 opportunity to become involved in this matter will
4 assist in its ongoing understanding of the timber
5 management planning process.

6 Because of MOE's responsibilities
7 regarding bump-up requests, it believes that membership
8 on the planning team with all of the accompanying
9 responsibilities, including decision-making, could be
10 seen as inappropriate.

11 I have discussed this matter with Mr.
12 Freidin --

13 THE CHAIRMAN: Why, conflict of interest?

14 MR. CAMPBELL: Yes, directly. It seems
15 to us that if MOE is involved in making decisions on a
16 plan directly and then is seen as the arbiter of
17 bump-up requests that there could be a perception of
18 conflict in that situation, and that is one which we
19 recommend to the Board be avoided. It is not essential
20 to MOE's purposes in participating in the planning team
21 exercise that it carry those responsibilities. And, as
22 I say --

23 THE CHAIRMAN: Mr. Campbell, how do you
24 avoid that situation where in the course of a timber
25 management plan even if MOE attends a meeting and sees

1 something occurring that in its view is environmentally
2 undesirable and makes its views known clearly to the
3 planning team that that would be unacceptable to the
4 Ministry of the Environment and the planning team
5 thereupon defers, if I might put it that way, to the
6 Minister of the Environment's position and follows that
7 advice.

8 Now, why is that any different than when
9 the Ministry then views a bump-up request at a later
10 date that there is not a perceived, or could not be
11 perceived conflict in that situation?

12 What I am suggesting is to have the
13 Ministry operate in a pure fashion to the extent that
14 there could never be a perceived conflict of interest
15 would mean an abrogation to some extent of its
16 responsibilities in the preparation of the plan. Would
17 that not be the case?

18 MR. CAMPBELL: I think what we are trying
19 to say, Mr. Chairman, is that MOE in taking up this
20 opportunity to participate fully is not intending to
21 take on direct responsibilities for plan presentation,
22 nor does MNR wish it to do so. I think we really agree
23 that this approach both gives MOE an appropriate window
24 on the process while at the same time avoiding just the
25 kinds of difficulties that you spoke of.

1 If MOE has a concern that there is an
2 environmental problem with something that has been
3 proposed, that will be documented in the minutes, it
4 would be recorded. There is no intention that there is
5 some kind of silent partner either minuted or
6 otherwise, as I understand it in my discussions with
7 Mr. Freidin, and that would be documented as in every
8 other case. So it would be a very open and public
9 participation.

10 The fact of the matter is though that MNR
11 carries the responsibility for plan approval and we
12 think it inappropriate to diffuse that responsibility
13 and we don't feel that participating in the way
14 described in the planning process and in the planning
15 team meetings would diffuse that responsibility at all.

16 In any event, Mr. Chairman, we have
17 discussed -- this has been a matter of ongoing
18 discussions with Mr. Freidin and myself and I confirm
19 that -- I am advised that MNR is in agreement with this
20 resolution of the matter. I should also advise the
21 Board that we don't feel that a specific term and
22 condition regarding this matter is necessary.

23 Perhaps just in closing I should ask Mr.
24 Freidin on behalf of MNR to confirm the agreement
25 between the two ministries to put these arrangements in

1 place.

2 MR. FREIDIN: Yes. I can indicate that
3 Mr. Campbell has indicated the bottom line of our
4 discussions accurately.

5 THE CHAIRMAN: All right.

6 Gentlemen, with respect to your last
7 comment, Mr. Campbell, of not referring to this
8 arrangement by way of a specific condition of approval,
9 would you not suggest that something should be
10 documented in terms of this agreement so that
11 everybody - if the Board also agreed with this proposed
12 disposition of the issue - that the role of the two
13 ministries were clarified to the extent that there is
14 no uncertainty in the public's mind as to why, for
15 example, the Ministry is not part of a planning team?

16 It's fine to have your arrangement behind
17 the scenes and it's fine to even have a memorandum of
18 agreement between the two parties, but it would be the
19 Board's view I think that what the public will see with
20 any approved planning process emanating from this
21 hearing would be a process which also includes a
22 variety of conditions of approval, and if this
23 arrangement were documented in that place, would it not
24 provide the public with a much more clear understanding
25 of what the relationship with respect to this issue is

1 between the two ministries?

2 MR. CAMPBELL: Yes, I think so, Mr.
3 Chairman. I think we could -- I guess what I would
4 suggest is that if the Board referred to this matter in
5 its reasons, if we prepared a summary which basically
6 would be an editing, to put in more elegant words, what
7 I said inelegantly in the transcript, and that could
8 simply be appended into the Board's Reasons for
9 Decision, that would be a communication of it and the
10 issue would be resolved.

11 I just don't feel that perhaps something
12 where there has been an agreement and it is going to be
13 implemented accordingly in the Board's decision that it
14 needs to be included in the terms and conditions.

15 THE CHAIRMAN: Well, with the exception
16 that where you are dealing with issues of which there
17 is probably actual or perceived public concern. I
18 think it would be the Board's view that it should be
19 documented in such a way so as to flag those concerns
20 and provide the public with an easy answer that is in
21 front of them without having to wonder what the - not
22 secret arrangements - but what the behind-the-scenes
23 arrangements in fact are. That is all.

24 MR. CAMPBELL: That is fine.

25 Now, Mr. Chairman, before commencing my

1 cross-examination, I would ask that the Board mark as
2 the next exhibit number a green binder which has been
3 placed in front of you, and if I can get a number on
4 this, then I will explain to you what it is all about.

5 THE CHAIRMAN: Exhibit 911.

6 ---EXHIBIT NO. 911: Green binder produced by MOE.

7 MR. CAMPBELL: Now, the Board will see
8 that the binders have two tabs in them, a Part 1 and a
9 Part 2.

10 THE CHAIRMAN: We like Part 1.

11 MR. CAMPBELL: I knew you would. I
12 however am going to address Part 2 first.

13 What Part 2 consists of - and there is an
14 index behind the tab - it consists of excerpts from a
15 variety of plans and a variety of topic areas. There
16 are basically six plans and there are excerpts from all
17 six plans grouped together with respect to Table 4.11
18 of the Timber Management Planning Manual, with respect
19 to stand listings, with respect to Table 4.12 and
20 various planning records as are listed in the exhibit
21 in the index behind the Part 2 tab.

22 That section of the document is all
23 numbered consecutively and I will be referring to it
24 regularly in my cross-examination.

25 I should advise the Board that on the

1 index page we show under Section A the date of
2 certification by the forester for each of the plans
3 from which these excerpts were drawn. They are all
4 1989 dates and they range from February right through
5 to the end of September.

6 Now, these excerpts are taken directly
7 from plans that are filed with the Ministry of the
8 Environment, Environmental Assessment Branch. They
9 have all been forwarded to that Branch by MNR. It is
10 not always possible, based on the documentation that
11 comes forward, to determine whether these are final
12 plans or plans that are going up through the approval
13 process, but, in any event, we have included the
14 certification page in each case for each plan which has
15 a signed certification by the forester who has prepared
16 the plan, that it's been prepared in accordance with
17 the Timber Management Planning Manual. I believe that
18 is the wording in the certification in any event, and
19 it's right there in the books for you to look at.

20 Obviously in entering this material, I
21 have spoke to my friend Mr. Freidin about the question
22 of proof of this material and I can advise the Board
23 that he is happy to have it entered as being exactly
24 what it purports to be, timber management planning
25 material forwarded to MOE by MNR and I, therefore, am

1 relieved of any future obligation to call an
2 appropriate mail clerk to prove that in fact they were
3 received and, of course, there was never ever any real
4 question of having to do that, and Mr. Freidin has
5 kindly consented to the matter -- to the material being
6 approved simply by filing.

7 Now, Part 1 which as you noticed is now
8 empty, we will be filing various materials in the
9 course of the cross-examination, most of them are
10 simply -- there is some new material, there is a lot of
11 material that is basically just amendments, suggested
12 or proposed amendments to various tables and so on in
13 the Timber Management Planning Manual.

14 I want to be clear that we will be making
15 in the course of cross-examination specific suggestions
16 and proposals which we believe are workable and address
17 some of the problems which we perceive with the
18 planning process.

19 I want to point out that these are not
20 yet final proposals that we are making to the Board.
21 We want the views of this panel with respect to those
22 proposals and we would welcome the views of MNR and
23 other intervenors in the hearing before we finalize
24 these proposals into possible terms and conditions
25 which we might suggest.

1 THE CHAIRMAN: Well, when you say you
2 want the views of the panel, I take it you mean just
3 through our normal inquiries as we --

4 MR. CAMPBELL: I'm sorry, I meant the
5 witness panel not the Board, Mr. Chairman.

6 THE CHAIRMAN: Right. Okay.

7 MR. CAMPBELL: Although I would love to
8 have the views of the Board as well but, generally
9 speaking, I am not that lucky.

10 THE CHAIRMAN: You will have to wait for
11 that for some time yet.

12 MR. CAMPBELL: I meant the witness panel.
13 And what we hope to address with these proposals, Mr.
14 Chairman, is a difficulty which you raised in the
15 transcript on October 18th and the words I am going to
16 read can be found at Volume 149 at page 25745 where
17 you, Mr. Chairman, stated the following:

18 "...it appears to the Board that, on the
19 one hand, parties are calling for more
20 and more explicit documentation and, on
21 the other hand, they are calling for a
22 process that is understandable and
23 traceable by the public.

24 And speaking again for myself, and
25 perhaps my colleagues, which way do we

1 go?"

2 Now, Mr. Chairman, over the next few days
3 we hope to point you through this cross-examination in
4 some specific directions which we believe may be
5 helpful in addressing that difficulty.

6 I would like to emphasize again though,
7 do not assume that these are final proposals from the
8 Ministry of the Environment. We believe they are at
9 least thoughtful proposals and we don't put them
10 forward lightly, but we do welcome comments from all of
11 the parties, including MNR, on the matters that I will
12 be raising.

13 THE CHAIRMAN: Well, Mr. Campbell, that
14 is precisely why, in the Board's Rules of Practice -
15 and we have given some considerable thought at the
16 Board - to where the Ministry of the Environment should
17 be addressing these matters in the process and that is
18 one of the reasons why your client finds himself at the
19 end of the process, because the Board feels strongly
20 that you should have the benefit of hearing all
21 parties, not just the proponent's but those in
22 opposition and others in support as well before, in
23 effect, the Ministry of the Environment's position is
24 finalized.

25 The reason being is, the Board views the

1 Ministry as a regulatory agency that is in a sense
2 neutral in that you are not necessarily supporting an
3 application nor opposing an application, but if I might
4 use the cliché, protecting the environment and, as a
5 consequence, we would like you and your client to have
6 the benefit of all submissions before your conditions
7 are finalized.

8 That doesn't, by the way, take away your
9 obligation to file draft terms and conditions at the
10 appropriate time so that the parties, including all of
11 them, know what at least the preliminary views of the
12 Ministry are.

13 MR. CAMPBELL: Thank you, Mr. Chairman.

14 And those sediments are of course exactly
15 the approach we have tried to take and we do feel that
16 there are some responsibilities that go with that
17 position that the Board has outlined and I hope we will
18 demonstrate that we take those responsibilities
19 seriously.

20 In any event, gentlemen --

21 MR. FREIDIN: And, Mr. Chairman, if I
22 might just add for clarification. Mr. Campbell made
23 the comment that the Ministry of the Environment wanted
24 views of this witness panel and would welcome the views
25 of MNR and others before they finalized their terms and

1 conditions.

2 I assume that in indicating that the
3 views of MNR and others, but in particular MNR, may be
4 forthcoming after this cross-examination, is partly in
5 recognition of the fact that maybe some of the
6 propositions being put forward are matters which the
7 Ministry would have to consider before formally
8 indicating agreement or not with the proposal.

9 THE CHAIRMAN: Yes, and we would also
10 like you to consider - although we will discuss it
11 later today - the negotiating process which we have
12 introduced in draft form because there may be a
13 finalization of conditions or positions of all parties
14 subsequent to those negotiations as well, including the
15 Ministry.

16 MR. CAMPBELL: And I appreciate Mr.
17 Freidin's remarks, Mr. Chairman. We do have though
18 available on this panel some very specific MNR
19 expertise in these areas and I believe that there are
20 several propositions about the material that we will be
21 able to establish apart entirely from a final MNR
22 position on some of them.

23 CROSS-EXAMINATION BY MR. CAMPBELL:

24 Q. Now, if I could turn then to the
25 panel. Gentlemen, I have never before cross-examined a

1 panel of eight people I don't think, certainly if I did
2 it was earlier than these hearings, but I think
3 actually this is the first time I have ever
4 cross-examined so many people all at once.

5 So I am going to try and sort of lay down
6 an operating procedure. I am going to focus my
7 questions basically on Messrs. Kennedy, Multamaki, and
8 Bisschop as representing three areas of expertise in
9 the qualifications; Mr. Kennedy in timber management
10 planning, Mr. Multamaki both in timber management
11 planning and the specifics of the Red Lake Plan, and
12 Mr. Bisschop as an environmental planner.

13 I recognize that there is additional
14 expertise on the panel on timber management planning
15 and other matters, I will be touching upon them, but I
16 would ask the other panel members to let me know if you
17 have got any disagreement or concern or if you want to
18 correct any of the answers that are given by this
19 central grouping in the panel. I obviously don't want
20 to find myself in the position at the end of the day
21 where I hear about significant disagreements long after
22 the topic has gone by.

23 So I would ask you to feel free, if you
24 have got an additional perspective you want to bring to
25 the matter, to bring it up as we go along.

1 MR. CAMPBELL: And Mr. Freidin will
2 recognize that the last thing I want to have happen is
3 to hear that different view on redirect when I'll have
4 no opportunity then to explore its basis. So I want it
5 now --

6 THE CHAIRMAN: Which is where Mr. Freidin
7 would like to bring it up.

8 MR. CAMPBELL: So I want it as we go.

9 MR. FREIDIN: You are not devious like
10 that.

11 MR. CAMPBELL: And I would like to be
12 clear that if I don't hear from you as we go, I am
13 assuming and I will be asking the Board to assume, that
14 there is no disagreement, concern with, or correction
15 required of the answers given by the central panel --
16 central members of the panel.

17 MR. FREIDIN: I am not too sure whether
18 in fact you, Mr. Chairman, or Mr. Campbell through that
19 submission can in fact saddle the witnesses on this
20 panel with that particular approach.

21 MR. CAMPBELL: Well, Mr. Chairman, I am
22 left in the horns of a dilemma; I either having
23 established something then have to canvass the whole
24 panel, or I can do it this way.

25 I think it's a lot more efficient to do

1 it this way and I'm trying be as fair about it as I
2 can.

3 MR. FREIDIN: All I am doing, Mr.
4 Chairman, is just covering the possibility that
5 everything doesn't pop into the heads of the witnesses
6 at a particular point in time where it's convenient to
7 elaborate on a point, it may get missed, and I don't in
8 any way feel that that is an appropriate basis to limit
9 my re-examination.

10 THE CHAIRMAN: No, no. Throughout the
11 cross-examination, why don't we proceed on this basis:
12 Panel, if you have any major disagreement with the
13 questions put to the three members the panel by Mr.
14 Campbell, indicate your disagreement.

15 If something occurs to you throughout the
16 length of the entire cross-examination that you feel
17 must be addressed of something said earlier, jump in at
18 that point and advise the Board what it is and then we
19 will leave you to the mercy of Mr. Freidin's
20 re-examination to clarify anything further.

21 And by the time the whole panel is
22 finished, Mr. Campbell, we will assume that that is the
23 evidence before us.

24 MR. CAMPBELL: All right, thank you.
25 Thank you, Mr. Chairman.

1 And the only thing I would ask the panel
2 to perhaps adjust slightly from your remarks is, I
3 don't really care whether you disagree with my
4 questions, what I am worried about is if you disagree
5 with someone else's answer. That is what I need
6 addressed.

7 Q. Now, Mr. Kennedy, I think my first
8 question is for you and it has to do with the
9 structuring of the approval which you are seeking and
10 the draft terms and conditions which have been filed.

11 Am I correct in reading that material
12 that it is MNR's intention that the Timber Management
13 Planning Manual as amended by the terms and conditions
14 and the balance of the terms and conditions - let's
15 take those two documents, the Timber Management
16 Planning Manual and the terms and conditions - those
17 two documents taken together will be the documents
18 which guide timber management planning in Ontario, if
19 the approval is granted in the way you seek?

20 MR. KENNEDY: A. Yes. We have outlined
21 in our term and condition No.30 in Exhibit 700 that
22 very point.

23 Q. All right. I just want to be
24 absolutely clear about that. So the guiding documents
25 will be the Timber Management Planning Manual and the

1 terms and conditions, and that in terms of the
2 documents which guide timber management planning in
3 Ontario, the Environmental Assessment Document as filed
4 will not be one of the documents which will so guide it
5 once the hearing is over and assuming an approval is
6 granted the way MNR has requested it?

7 A. Yes. We have put forward a proposal
8 that the terms and conditions would be a stand alone
9 document. I understand that that was the subject of
10 some discussion last week, that there was going to be
11 further discussion on, but that is the proposal to
12 date, that the terms and conditions would be stand
13 alone and that the Timber Management Planning Manual
14 would be revised to incorporate the items of process
15 from the Class EA Document, Exhibit 4, and any other
16 outcomes of the hearing.

17 THE CHAIRMAN: Well, Mr. Kennedy, that
18 includes as well any collateral documentation referred
19 to in the Timber Management Planning Manual such as the
20 provincial guidelines. Would that not be the case?

21 MR. KENNEDY: Yes, it does.

22 MR. CAMPBELL: Q. All right. Now, just
23 so I want to be absolutely clear in my understanding of
24 your answer and it is simply this: That the
25 Environmental Assessment Document itself filed as

1 Exhibit 4 is not included in that group of documents
2 which I have classified as being the documents which
3 would guide timber management planning in Ontario if
4 the approval is granted; it's the Timber Management
5 Planning manual and the terms and conditions, those two
6 documents taken together which will be the documents
7 which guide timber management planning in Ontario; is
8 that correct?

9 MR. KENNEDY: A. And so that we are
10 clear we are talking the same thing, I am making the
11 assumption that the Timber Management Planning Manual
12 has been revised to incorporate the outcome of the
13 hearing.

14 Q. Yes. Given that, the answer to my
15 question I take it is yes?

16 A. That's correct.

17 Q. Thank you.

18 MR. FREIDIN: And, Mr. Chairman, just for
19 my clarification and perhaps to assist me in terms of
20 what I may want to request this afternoon, can you just
21 indicate again what your comment was regarding
22 guidelines?

23 THE CHAIRMAN: Well, it is obvious from
24 what we have heard in the evidence that heed has to be
25 paid in the timber management planning process to

1 various guidelines such as the fish habitat guidelines,
2 the tourism guidelines, et cetera. And to the extent
3 that those are collateral documents which must be
4 referred to in the process and are referred to in terms
5 of the Timber Management Planning Manual, they would
6 also form part of the guiding principles, if I might
7 put it that way, of timber management planning in
8 Ontario.

9 So you have the stand alone document of
10 the Timber Management Planning Manual, you have as well
11 the draft terms and conditions, but there are still
12 other documents outside those two documents which must
13 be referred to and paid attention to in terms of timber
14 management planning in Ontario.

15 MR. KENNEDY: And, Mr. Chairman, I draw
16 your attention to the fact that I believe the majority
17 of those manuals are outlined in draft terms and
18 conditions 40 and 41 that deals with the time to time
19 revisions of those manuals.

20 THE CHAIRMAN: That's right. So I guess
21 what I am saying, if somebody wants to have an
22 appreciation of what is encompassed within planning
23 process they can't just look at the two documents you
24 referred to, they would have to also take into account
25 this other list of documents, as you say perhaps

1 mentioned in condition 40 through 42 or whatever those
2 numbers were.

3 So it's not just the two, that is the
4 only point I am making. Does that clarify your
5 question?

6 MR. FREIDIN: The Ministry agrees with
7 that and I would just indicate that this afternoon --

8 THE CHAIRMAN: Mr. Kennedy finds the fact
9 that the Ministry agrees --

10 MR. FREIDIN: No, I think he finds it
11 will probably cost him a quarter.

12 I would just indicate that this afternoon
13 that some of my remarks in relation to the proposed
14 direction will be related specifically to the paragraph
15 where you indicated people should be considering
16 amendments of some of the documents including the
17 guidelines. I don't want to get into that right now, I
18 just wanted to --

19 THE CHAIRMAN: And it may be and the
20 Board recognizes - and that procedural directive was in
21 draft form - that some of those other documents are
22 incapable of being amended, such as for instance the
23 provincial guidelines in some cases.

24 MR. FREIDIN: I think we should leave
25 that for this afternoon.

1 THE CHAIRMAN: Yes.

2 MR. CAMPBELL: Q. Now, Mr. Kennedy, if
3 we take these two documents, the Timber Management
4 Planning Manual and the terms and conditions as being,
5 I guess to characterize it accurately, those documents
6 that are sort of at the top of the pyramid in terms of
7 the documents which will guide timber management
8 planning in Ontario, what discretion will the Ministry
9 planners have or what do you see them as having with
10 respect to changes to the Timber Management Planning
11 Manual at a date after the Board's terms and conditions
12 are incorporated, or once that -- or do you see it as
13 being the case that once those terms and conditions are
14 incorporated, that fixes the document until the next
15 review?

16 MR. KENNEDY: A. I would see that there
17 would still be some discretion left to revise the
18 Timber Management Planning Manual on the basis of
19 applying it and the experience gained.

20 I don't think it would be necessary to
21 wait until the Class EA is up for review before the
22 Board again, and I would suggest that I would
23 characterize those revisions as somewhat minor in
24 nature, at least I would anticipate them to be minor in
25 nature. I would not significantly alter the intent of

1 the planning manual.

2 Q. And do you see any particular review
3 process or approval process being required in order to
4 make such changes in MNR's discretion?

5 A. Well, certainly as with the
6 development of the manual and some of the revisions
7 that have taken place, we've had a level of review,
8 primarily internal review, and I would expect to see
9 that continue, that we would have advice provided by
10 each one of our regions as well as through our senior
11 forestry staff in regards to any of the suggested
12 changes of the various pages or tables, charts within
13 the manual.

14 Q. Do you see any external review as
15 being required?

16 A. It's certainly something that is
17 worth considering. It's something that I have not
18 given a lot of thought to.

19 I can advise that it's my understanding
20 when the manual was first being prepared in earlier
21 drafts there was a level of outside review and I would
22 suggest there is a level of review going on here at the
23 hearing.

24 Q. Can I take it from that then that
25 while the Ministry wishes to have some discretion to

1 amend the manual, after the approval of this Board, you
2 really don't have a position at this point as to
3 precisely how such amendments should be reviewed and
4 put in place?

5 A. That is correct.

6 MR. BISSCHOP: A. Mr. Campbell, I should
7 draw your attention to term and condition No. 59 which
8 does address the possibility of amendments to the
9 approved undertaking during the term of the approval
10 which in part deals with, I believe, the subject matter
11 that you are questioning on.

12 And in the latter part of that condition
13 where we outline the procedure, there is a
14 consideration there of the possible extent of public
15 review to achieve an amendment to the approved
16 undertaking.

17 Q. All right. So that you are including
18 in the approved undertaking the precise Timber
19 Management Planning Manual that has incorporated the
20 changes required by the terms and conditions, and you
21 are saying that this amendment process would apply to
22 any further changes beyond the changes made by this
23 Board's terms and conditions; is that correct?

24 A. If I understand your question
25 correctly, just as we will amend the Timber Management

1 Planning Manual upon the decision of the Board, there
2 may be, during the term of the approval as a result of
3 possible amendments to the approved undertaking, the
4 necessity to further amend the Timber Management
5 Planning Manual and that provision is addressed in 59.

6 Q. All right. So let me understand the
7 sequence here, Mr. Bisschop. You intend to amend the
8 Timber Management Planning Manual to incorporate the
9 Board's terms and conditions?

10 A. Correct.

11 Q. Then if there was any further
12 amendment proposed, you intend to follow the process
13 that is outlined in term and condition 59?

14 A. If there is an amendment to the
15 approved undertaking, yes.

16 Q. My question is: If there is a
17 further amendment to the Timber Management Planning
18 Manual, will that amendment to the Timber Management
19 Planning Manual follow the process outlined in term and
20 condition 59?

21 A. To be clear, I see the amendment to
22 the approved undertaking following this process. There
23 will be a decision at that time, if that decision
24 requires that the Timber Management Planning Manual be
25 amended further, that would follow just as in the case

1 that we are dealing with now.

2 Q. My question is a lot simpler than
3 that, Mr. Bisschop, it's: Given the situation that
4 this Board grants an approval, the Timber Management
5 Management Planning Manual is amended as required by
6 the terms and conditions of that approval, so that
7 document is then amended; all right?

8 A. Correct.

9 Q. All right. My question is a simple
10 one. From that point forward if there is proposed to
11 be an amendment to the Timber Management Planning
12 Manual, will that amendment be conducted according to
13 term and condition 59?

14 A. And my answer to that has to be no,
15 that --

16 MR. FREIDIN: I think --

17 MR. CAMPBELL: Well, just a minute, Mr.
18 Freidin, I would like to know Mr. Bisschop's answer
19 first, please. He said no and I think he was still
20 talking.

21 MR. BISSCHOP: It may be possible that
22 there is no requirement to amend the Timber Management
23 Planning Manual.

24 MR. CAMPBELL: Q. That is not my
25 question, Mr. Bisschop, with respect.

1 MR. BISSCHOP: A. Oh.

2 Q. My question is: If there is an
3 amendment proposed to the Timber Management Planning
4 Manual, I am not saying there is an amendment, there
5 may be other things that don't require changes to the
6 Timber Management Planning Manual.

7 I am saying, say there is something that
8 requires a change or MNR wishes to propose a change to
9 the Timber Management Planning Manual will the
10 provisions of term and condition 59 be followed?

11 A. No. Condition 59 does not address
12 amending the Timber Management Planning Manual, it
13 addresses amending the approved undertaking.

14 MR. FREIDIN: And, Mr. Chairman, our term
15 and condition - and I don't want to go on - let me just
16 clarify what the position of the Ministry is. Term and
17 condition --

18 MR. CAMPBELL: Just a minute.

19 THE CHAIRMAN: Just a minute.

20 MR. CAMPBELL: Mr. Chairman, this is not
21 a time for clarifying the position of the Ministry.

22 MR. FREIDIN: All right. You don't want
23 the answer, Mr. Campbell.

24 MR. CAMPBELL: It isn't a matter of not
25 wanting the answer, it's a matter of I'm just asking a

1 simple question. If Mr. Freidin wants to add something
2 fine, but I don't want this cross-examination
3 constantly interrupted with clarifying the positions of
4 the Ministry. That's what I'm asking the questions
5 about.

6 MR. FREIDIN: I'll deal with it in
7 re-examination.

8 MR. CAMPBELL: Well, deal with it now,
9 Mr. Freidin, or it leaves me in suspense otherwise.

10 THE CHAIRMAN: Well, listen gentlemen,
11 there is no sense in bickering over this.

12 The Board wants in the most expeditious
13 way possible the answers and, to the extent that they
14 can be clarified at the time they are coming in, it
15 will probably make it easier for the Board in its
16 notetaking to follow along.

17 We all realize that it can be addressed
18 in re-examination, but we are trying with this massive
19 evidence to make our job somewhat easier without
20 necessarily following the exact procedure that might be
21 applicable in a court of law.

22 So from that point of view, Mr. Freidin,
23 let's have the clarification now. I think it will make
24 it easier for us.

25 MR. CAMPBELL: You are quite right, Mr.

1 Chairman, it makes perfect sense and I've decided --

2 THE CHAIRMAN: All right, thank you.

3 MR. FREIDIN: Mr. Bisschop, Mr. Kennedy
4 indicated in response to a question about whether he
5 thought any approval process necessary if you were
6 going to amend the Timber Management Planning Manual,
7 he said that he had not thought of it and it was
8 something worth considering.

9 You then went to condition 59 and
10 indicated in answer to the question from Mr. Campbell
11 that the answer was no.

12 Now, was Mr. Kennedy talking about
13 something different than what you were addressing in
14 relation to term and condition No. 59?

15 MR. BISSCHOP: As I understand it, Mr.
16 Kennedy's answer was in response to some kind of public
17 involvement, public review in amending the manual
18 itself and that is when I came in to clarify that there
19 may be amendments to the undertaking at some time in
20 the future and it's through that mechanism that there
21 would be public review.

22 The results of any decision on amending
23 the undertaking then, if they required a change to the
24 manual, the change to the manual would follow.

25 MR. FREIDIN: Now, Mr. Kennedy indicated

1 that one of the reasons that the Timber Management
2 Planning Manual might be amended in the discretion of
3 the Ministry is to apply experience gained in applying
4 the process.

5 Would that kind of an amendment be the
6 kind of amendment which would fall under condition 59?

7 MR. BISSCHOP: Yes, it could fall under
8 59(i).

9 MR. FREIDIN: Thank you.

10 MR. CAMPBELL: Q. Well, Mr. Bisschop,
11 now I am completely confused. You are saying that the
12 Timber Management Planning Manual could be amended as a
13 result of 59(i) a correction, clarification or
14 improvement in the timber management planning process;
15 is that correct?

16 MR. BISSCHOP: A. Yes, we would seek the
17 the amendment on process following condition 59.

18 Q. All right. Now, can --

19 A. Whatever -- excuse me, if I could
20 finish here. Whatever the decision was on that request
21 to amend, if successful, would require that the Timber
22 Management Planning Manual subsequently be revised, if
23 I can choose the best word.

24 MRS. KOVEN: Excuse me, Mr. Bisschop.
25 Are you talking about the way you have described the

1 approval period being between now and the time we come
2 out with our decision, or any time in the future?

3 MR. BISSCHOP: We are -- in term and
4 condition 60 we are indicating we are seeking approval
5 for a period of six years and what I am saying is
6 during that six years we may request an amendment to
7 the approved undertaking, and that is what I mean
8 during the term of the approval, during that six years
9 there may be a request to amend the undertaking.

10 MR. MARTEL: What process is used there?

11 MR. BISSCHOP: To do that?

12 MR. MARTEL: How do you amend it?

13 MR. BISSCHOP: As described in condition
14 59, where we indicate under what circumstances that
15 might happen and then in the second half of the
16 condition we describe the procedure that would be
17 followed which could go as far as involving the
18 Environmental Assessment Board as indicated in
19 paragraph (c).

20 THE CHAIRMAN: Are you also suggesting
21 that the approval would be in effect from this Board
22 for a six-year period commencing with the date upon
23 which the approval was given as shown in condition 60
24 and, if that is the case, that does not include a
25 commencement date for that six-year period from the

1 date that the Timber Management Planning Manual is
2 revised; is that correct?

3 MR. BISSCHOP: Are you asking are the two
4 dates coincident?

5 THE CHAIRMAN: Well, if our approval is
6 supposed to be in effect for six years and as part of
7 the approval you would have to revise the planning
8 manual, that may take some time; might it not, I mean
9 you can't do it overnight.

10 MR. BISSCHOP: We have indicated eight
11 months.

12 THE CHAIRMAN: Eight months for the
13 revision of the manual?

14 MR. BISSCHOP: In term and condition 30
15 that is what we have said.

16 THE CHAIRMAN: And that would be included
17 within the six-year period? In other words, it's not
18 six years from the date that the planning manual which
19 is one of the guiding documents is in fact revised,
20 the way you have got it worded in any event?

21 MR. BISSCHOP: The reason I hesitate, it
22 is possible -- if you read condition 60, the second
23 sentence, it's possible that you may, the Board may
24 approve the undertaking in say July.

25 THE CHAIRMAN: Of which decade?

1 MR. BISSCHOP: I refrain from adding a
2 year to that. So it's possible that there may be an
3 approval in July. We would immediately commence
4 amending the manual. So that if my count is right we
5 could have the revised Timber Management Planning
6 Manual in place commencing the beginning of April the
7 following year and that would then -- the six years
8 would then follow.

9 THE CHAIRMAN: So basically six years
10 after the revision of the manual?

11 MR. BISSCHOP: It's possible but not
12 necessarily so.

13 THE CHAIRMAN: Well, I guess it doesn't
14 matter, it's just a matter of clarifying what you mean
15 by the six-year period, what it includes.

16 MR. FREIDIN: We are going to address
17 that in 17 and your questions have been very helpful in
18 terms of focusing us.

19 THE CHAIRMAN: Good. Okay, Mr. Campbell,
20 sorry to get you off track.

21 MR. CAMPBELL: It's all right.

22 Q. Mr. Bisschop, we left off looking at
23 59(i) of the terms and conditions. We had established
24 that the documents that are going to guide timber
25 management planning in Ontario are the Timber

1 Management Planning Manual as amended in the balance of
2 the terms and conditions. Can you see making -- and
3 those are the documents which define the timber
4 management planning process; am I correct?

5 MR. BISSCHOP: A. That's correct.

6 Q. Can you see making any change to
7 those documents which would not fall within one of the
8 categories of correction, clarification or improvement?

9 A. Excuse me, could you state that
10 question again, please.

11 Q. Can you see making any changes to the
12 Timber Management Planning Manual that would not fall
13 within the categories of correction, clarification or
14 improvement?

15 A. No.

16 Q. Now, if I understand that answer
17 correctly then, the Timber Management Planning Manual
18 sets out the timber management planning process, any
19 amendments to the manual would be done for the purpose
20 of correction, clarification or improvement, and I then
21 read term and condition 59 as giving some assurance to
22 people generally that if the Timber Management Planning
23 Manual is amended following the implementation of the
24 approval, they will have the protections offered by
25 this section; is that not correct?

1 A. Right.

2 Q. I simply wanted to be very clear
3 about how the procedure would be followed. That is
4 fine, I think we have it crisp and clear now. Thank
5 you.

6 Now, I want to take you then to term and
7 condition 30 which has to do with incorporating the
8 results of this Board's approval and it basically says
9 in the latter half that:

10 "Prior to finalization of these revisions
11 to the manual, MNR will provide the
12 Director of the Environmental Assessment
13 Branch, Ministry of the Environment, with
14 an opportunity to review those revisions
15 to ensure that all appropriate terms and
16 conditions of this approval have been
17 incorporated."

18 I take it you're familiar with that
19 wording?

20 A. The question is to me?

21 Q. Yes.

22 A. Yes, I am.

23 Q. And to Mr. Kennedy perhaps if he
24 wants to add anything. But I think the first --
25 whichever one of you wants to deal with the question.

1 What if the situation should arise where
2 there is a legitimate disagreement about how a term and
3 condition imposed by this Board, exactly what it means,
4 exactly how it should be incorporated into the
5 decision.

6 I take this term and condition as simply
7 reading that MNR is providing MOE with an opportunity
8 to review, but then I am a little confused by the
9 words:

10 "...to ensure that all appropriate terms
11 and conditions of this approval have been
12 incorporated."

13 I take it that the word 'ensure' is
14 intended to place upon MOE some responsibility to
15 ensure itself that the Board's terms and conditions
16 have been appropriately incorporated and that without
17 such a sort of sign-off from MOE that that amendment
18 cannot be completed.

19 Is that what is intended by that term and
20 condition?

21 A. Yes. The intent is that the Ministry
22 of the Environment would satisfy itself that MNR has
23 incorporated all of the terms and conditions.

24 Q. Right. So that there is a notion
25 of -- not just a notion, there is in fact contemplated

1 by this term and condition an approval by MOE that the
2 terms and conditions have been properly incorporated?

3 THE CHAIRMAN: Well, Mr. Campbell, that
4 doesn't get the Ministry out of Section 30 of the Act;
5 does it, the offence section of the Act?

6 If there is non-compliance with a term or
7 condition of the Board, it may constitute a
8 provincial -- may constitute a statutory offence under
9 the Act, and whether or not the Ministry of Environment
10 is willing to prosecute under that section doesn't
11 prevent necessarily somebody else from attempting to
12 have a charge laid under this section; does it, whether
13 or not MOE has signed off or not?

14 MR. CAMPBELL: No, Mr. Chairman, it
15 doesn't change that one bit. I am just trying to
16 understand the exact intent of these words and the
17 obligations that these draft terms and conditions are
18 intended to place upon the Minister whom I am
19 representing in these hearings.

20 Q. And, as I understand it, Mr.
21 Bisschop, it's contemplated that in effect the Minister
22 of the Environment is required to approve the revisions
23 to the manual in the course of their implementation; am
24 I correct in that?

25 MR. BISSCHOP: A. I wouldn't use the

1 word approve.

2 Q. What is contemplated then? What is
3 the responsibility that is contemplated for the
4 Ministry of the Environment by that condition?

5 I had read the word 'ensuring' as having
6 its usual meaning, that the Minister had to ensure that
7 in fact it was satisfied -- he was satisfied that the
8 terms and conditions of the approval have been
9 appropriately incorporated. I gather -- am I incorrect
10 in that?

11 A. I see it, put very simply, as we
12 provide the Minister of the Environment the opportunity
13 to review the revised manual and to satisfy themselves
14 that the appropriate terms and conditions have been
15 incorporated and that they simply inform MNR that they
16 are satisfied and the manual is revised.

17 Q. All right. What if they are
18 dissatisfied?

19 A. Then I would expect that the two
20 ministries will sort out the difference and conclude by
21 making sure that the manual is satisfactorily revised.

22 MR. FREIDIN: And, Mr. Chairman, I would
23 think in the normal course, in fact in the unlikely
24 event that the two ministries did not agree, although
25 there is nothing specific in these terms and conditions

1 addressing this, I don't think there would be much
2 difference than in the normal court proceeding, might
3 have to come back to the Board for direction as to what
4 in fact it did mean by a particular term and condition.

5 That is not something which is unheard of
6 in other proceedings; I don't think that it would be
7 something that would be unusual in these, although, as
8 I say, there is nothing specifically in here on that
9 matter.

10 MR. CAMPBELL: Well, I guess I am raising
11 the question, Mr. Chairman, as to whether there
12 shouldn't be. My understanding of the Environmental
13 Assessment Act is that there are no equivalent
14 provisions to the Consolidated Act where the Board can
15 retain jurisdiction for the purposes of clarification.

16 THE CHAIRMAN: That's right, there is no
17 provision for a re-establishment of the panel for
18 clarification of an earlier decision and it would be
19 the Board's view, under the interpretation of the
20 Environmental Assessment Act from which this Board
21 draws its jurisdiction, that it would be functus after
22 rendering a decision.

23 MR. FREIDIN: Well, I think we can just
24 leave that particular problem with the Ministry and
25 with me and we will hope to address that particular

1 matter in light of the comments which have been made.

2 Thank you.

3 MR. CAMPBELL: Q. Mr. Bisschop, I want
4 to continue with you and I want to turn to what I call
5 some of the characteristics of good environmental
6 planning.

7 And, Mr. Chairman, I just remind the
8 Board that Mr. Bisschop is the gentleman on the board
9 who is qualified as an expert in environmental
10 planning.

11 Q. And, Mr. Bisschop, I would ask you to
12 agree with a number of propositions. The first one I
13 would ask you to agree with is that these days good
14 environmental planning must be public; that is, the
15 information and rationale for decisions must be
16 publicly available. Would you agree with that
17 proposition?

18 MR. BISSCHOP: A. Yes, I would agree.

19 Q. And would you agree with the
20 proposition that with respect to the environment
21 affected, good environmental planning requires the
22 planner to describe the characteristics of the
23 environment affected?

24 A. I agree.

25 Q. And would you agree with the

1 proposition that with respect to environmental
2 evaluation, good environmental planning requires the
3 planner to describe the potential effects on the
4 environment of proposed actions and the alternatives to
5 those proposed actions?

6 A. Again, I agree.

7 Q. And would you agree as well that
8 to --

9 THE CHAIRMAN: Just a moment, Mr.
10 Campbell, would that last statement not be in reference
11 to an environmental assessment type methodology as
12 opposed to other management regimes which may not
13 require a delineation in reference to alternatives such
14 as might be contemplated under the Environmental
15 Protection Act, for example? In other words --

16 MR. CAMPBELL: I am not speaking
17 specifically to statutory requirements, Mr. Chairman, I
18 am saying that in order to achieve good environmental
19 planning - which has been all of my questions - in
20 order to achieve good environmental planning, these are
21 some general propositions.

22 I don't believe I have mentioned the
23 statute at all. So I am talking in a much more generic
24 sense.

25 THE CHAIRMAN: Okay.

1 MR. CAMPBELL: Q. All right. Mr.
2 Bisschop, my last question then, if I could repeat it
3 is, that in order to -- no, my last one I didn't get
4 to.

5 My last proposition that I would ask you
6 to agree with is that in order to conduct good
7 environmental planning you need to be able to trace the
8 rationale for decisions from the relevant science to
9 the decisions being made and then to the ground to the
10 specific environment affected. Would you agree with
11 that proposition?

12 MR. BISSCHOP: A. Yes, I'd agree.

13 Q. Now, I want to take you back to the
14 first of these good characteristics of environmental
15 planning, the requirement to describe the
16 characteristics of the environment affected.

17 I take it, gentlemen, you would all agree
18 that the area of the undertaking is very large. Mr.
19 Kennedy, perhaps can be the spokesman for this one.

20 MR. KENNEDY: A. Yes, we would.

21 Q. And you would agree that there is all
22 kinds of diversities in ecosystems, demographics,
23 cultures, wildlife, forest types, just to name a few?

24 A. Yes, there is diversity in the
25 Province of Ontario.

1 Q. And in fact we are looking at a large
2 amount of diversity, we are not talking about little
3 differences, there is a great deal of diversity in all
4 of this?

5 THE CHAIRMAN: I think we will concede
6 all that, Mr. Campbell.

7 MR. CAMPBELL: Thank you. I didn't hope
8 to have an argument on it.

9 Q. Would you agree that there have been
10 concerns expressed to the Ministry of Natural Resources
11 about minimum information requirements in this planning
12 process, the baseline data, information requirements
13 generally for decision making and those have been some
14 of the concerns that have been raised?

15 MR. KENNEDY: A. At this hearing, yes.

16 Q. Have they not ever been raised
17 outside this hearing?

18 A. I would imagine some of them have
19 been, yes.

20 Q. And would you agree that coming to
21 grips with this problem of information requirements is
22 difficult in part because of the very diversity that we
23 have spoken of?

24 A. Yes, that is a fair statement.

25 Q. Now, in terms of providing what is

1 needed for good environmental planning in terms of
2 describing the characteristics of the environment
3 affected, in this matter for you to come to grips with
4 this problem, would MNR agree with the proposition that
5 you need to preserve sufficient flexibility in dealing
6 with information requirements to deal with this
7 diversity in the environment while, at the same time,
8 not producing ridiculously large amounts of documents?

9 Would you agree with that general
10 proposition; you need flexibility to deal with that
11 diversity and to do it in a way without producing
12 ridiculously large amounts of documents. Would you
13 agree with that proposition?

14 MR. KENNEDY: A. Yes.

15 Q. Now, I want to then go back and
16 consider how the environment affected is dealt with in
17 timber management planning and I would remind you that
18 before the case started - I forget the exact date - or
19 about the time the case started the deputies of
20 Ministry of Natural Resources and Ministry of
21 Environment agreed on sort of lists of background
22 information that was set out on pages 13, 14 and 15 of
23 Exhibit 5A. Do you recall that list?

24 A. Yes, and we have repeated that list
25 in the statement of evidence volume -- Exhibit 813

1 pages 213 to 215.

2 Q. All right. I have seen it there, but
3 we also have copies.

4 MR. CAMPBELL: And, Mr. Chairman, these
5 are the first three pages I will ask the Board to
6 insert in Part 1 of the binders that we have provided
7 you with. I am going to distribute them now.

8 THE CHAIRMAN: Are you going to in any
9 way refer to them by any sub-numbers or anything?

10 MR. CAMPBELL: Yes. I am going to ask
11 you to start numbering them consecutively, the material
12 as it goes in, start numbering it consecutively in Part
13 1. This will be pages 1, 2, and 3.

14 And at the end of the week or whenever we
15 are all finished, I will give the Board an undertaking
16 to provide an index to those pages for all of Part 1
17 and we will keep track as we go along of a record copy
18 for the Board and we will put the index in front of
19 that and provide it to the Board for the Board's
20 purposes.

21 THE CHAIRMAN: So we just mark pages 1,
22 2, and 3 on these three pages; is that correct?

23 MR. CAMPBELL: That is exactly correct
24 and Ms. Harvie will keep track as we go along to make
25 sure I don't blow the pages numbers which I undoubtedly

1 do on several occasions.

2 THE CHAIRMAN: Mr. Campbell, it's the
3 Board's intention to break for lunch around noon today
4 until 1:30. Again, we are trying to keep the periods
5 occupying the court reporter to a reasonable length
6 today bearing in mind that she is unassisted.

7 And, again, it's our hope to come back
8 after lunch to deal with the procedural matters. We
9 would of course want to ensure that Ms. Swenarchuk is
10 present for that. We understand she is in Thunder Bay
11 and I think the hearing liaison officer is attempting
12 to contact her and we understand that contact has been
13 made with both Mr. Edwards and Mr. Colborne who will
14 also return after lunch.

15 So that that is what we have in mind. So
16 I thought that perhaps you could adjust your
17 examination accordingly.

18 MR. CAMPBELL: All right. I'll look for
19 an appropriate break somewhere around twelve o'clock.

20 THE CHAIRMAN: That would be fine.

21 MR. KENNEDY: Mr. Chairman, could you
22 just advise us, do you want the panel to stand by to
23 return to the stand later in the afternoon?

24 THE CHAIRMAN: Yes. We don't anticipate
25 being forever this afternoon. We imagine, depending on

1 the submissions made, that we may be an hour to hour
2 and a half possibly and then we will expect your
3 return.

4 MR. KENNEDY: Very well.

5 THE CHAIRMAN: Actually I think it would
6 be reasonable that you wouldn't have to return until
7 say three. So if you want to absent yourselves from
8 lunch until three, depending on what your counsel would
9 like you to do, that would be okay with the Board I
10 think.

11 MR. KENNEDY: Thank you.

12 MR. CAMPBELL: Q. All right. Mr.
13 Kennedy, you have those pages with you?

14 MR. KENNEDY: A. Yes, I do.

15 THE CHAIRMAN: Oh excuse me. I would
16 like to just countermand that last direction to this
17 extent: That if for some reason Ms. Swenarchuk has not
18 been contacted and consequently won't be here at 1:30
19 when we return, we will then I think put this off until
20 a bit later in the afternoon, also trying to
21 accommodate Mr. Edwards at the same time, and then we
22 would expect to go on with the evidence from this panel
23 immediately after lunch.

24 So I think you better keep in touch.

25 MR. KENNEDY: We will keep in touch.

1 MR. CAMPBELL: Q. All right. Now, Mr.
2 Kennedy, you would agree that as shown on page 1, that
3 list is not intended to be all inclusive and is
4 intended to be continually updated as additional types
5 of information become available; is that correct?

6 MR. KENNEDY: A. That's correct.

7 Q. And I take it that MNR would welcome
8 suggestions from other parties as to what should be on
9 the list?

10 A. That's also correct.

11 Q. Now, as I understand it, the
12 agreement with the deputy was that the list would be
13 used for training purposes; is that correct?

14 A. As I recall, yes.

15 Q. Now, we were provided with training
16 material that was used in 1988 which did indeed include
17 that list, and when I heard Mr. Bisschop the other day
18 speak to more recent training we requested up-to-date
19 training material with respect to timber management
20 planning and I was provided with that material used for
21 courses in 1989.

22 And, Mr. Bisschop, perhaps you could just
23 confirm. My understanding is that while the list was
24 used in training in 1988, it has not been used in
25 training in at least the material I was provided with

1 respect to 1989 training, and I was wondering if you
2 could explain why that is?

3 MR. BISSCHOP: A. My recollection is
4 that we did not provide the list in the 1989 training
5 courses and, subject to a check on my part, the reason
6 for that is that for the most part all of the district
7 staff that we dealt with in 1989 training had had some
8 previous training and would have the list.

9 I would want to qualify that by a check
10 on whether or not those districts had been involved in
11 the 1988 training program, but there is no question
12 that the 1989 training attempted to become more focused
13 on subject matters that required additional effort in
14 training.

15 The assumption I think is made that
16 people are aware -- in our district offices are aware
17 of this list, the effort in training was directed
18 towards area of concern planning and how to use the
19 guidelines in arriving at prescriptions.

20 Q. Mr. Bisschop, am I also not correct
21 though that this list was developed with area of
22 concern background information as being one of its
23 primary focuses, although it was not limited to that?

24 A. That's correct.

25 Q. And that in the training material

1 indeed it does focus a great deal on area of concern
2 planning process and I take it that you have given me
3 all the explanation you can as to why it's not in the
4 '89 material?

5 A. Right. And again to reiterate, the
6 understanding is that district staff are aware of this
7 list, the kind of information that needs to be
8 assembled on values maps. The direction in the
9 training was towards planning of operations to address
10 the values.

11 Q. All right. But if we go back to the
12 Minister's agreement it was as follows, and I'll read
13 to you:

14 "The list will be used by MNR in our..."
15 That is MNR's:

16 "...training sessions dealing with timber
17 management planning and will serve as a
18 minimum checklist of the types of
19 information which are normally assembled
20 as part of the background information for
21 planning."

22 Now, can you confirm or otherwise that in
23 fact those instructions are being given in all current
24 training sessions? Whether or not the list itself is
25 given, is reference made to it for the purpose of

1 assembling types of information that will normally be
2 available as background information for planning?

3 A. I can't confirm that we specifically
4 made reference to this list in training. We did speak
5 about values map and we did speak about area of concern
6 planning. The assumption is made that people have
7 become familiar with this list.

8 Q. But it is still, I take it, the
9 Ministry of Natural Resources' position that this list
10 will be used as a minimum checklist for the types of
11 information which are normally assembled as part of the
12 background information for planning; is that correct?

13 A. That is correct.

14 THE CHAIRMAN: Mr. Bisschop, would it not
15 just be easier to ensure that this list accompanies all
16 training material in the future, rather than relying on
17 the assumption that people have it? I mean, it's two
18 or three sheets of paper. What would be the problem
19 putting it --

20 MR. BISSCHOP: Exactly. On reflection,
21 we should have done that in the 1989 training course.

22 THE CHAIRMAN: So the Ministry would be
23 prepared to include this kind of list in any future
24 training courses; is that correct?

25 MR. BISSCHOP: There certainly should be

1 no problem to do that.

2 MR. CAMPBELL: Q. Well, I take it the
3 list is -- just to cover off some of the other
4 documents, it's not included in the terms and
5 conditions; is that correct?

6 MR. KENNEDY: A. There is reference made
7 to the categories of information that is shown on this
8 list. I believe, if I may just have a moment, this has
9 been subject of some -- I believe two parties'
10 cross-examination. If I could draw your attention to
11 term and condition No. 6 on Exhibit 700, and I don't
12 believe you were in the hearing room when there has
13 been a suggestion made by one of the other parties that
14 the term and condition No. 6 be revised.

15 The current No. 6 has the headings that
16 you will see on the Exhibit 5A pages and there has been
17 a suggestion that the entire list be repeated there in
18 the terms and conditions.

19 Q. All right. You are quite right that
20 I missed that. It is not contemplated, as I understand
21 it, that the list will however be incorporated into the
22 Timber Management Planning Manual? Is that a fair
23 reading of the proposed terms and conditions?

24 A. No. I would say that that is not a
25 fair reading. At the moment I believe I have led

1 evidence to the fact that in the Timber Management
2 Planning Manual there currently is no reference to the
3 values map and that is one of the areas that we have
4 identified we need to address in the revision to the
5 Timber Management Planning Manual.

6 And I can see some benefit in putting
7 this list into the manual perhaps in an appendice.

8 Q. All right. So that I can assume from
9 that answer that although it is not in the Timber
10 Management Planning Manual now that when reference to
11 the values map goes in, there will also be as part of
12 that reference to assembly of background information
13 generally?

14 A. Generally, yes.

15 Q. And this list speaks to background
16 information generally, and I take it that it would also
17 incorporate other useful suggestions for additions to
18 the list?

19 A. It would recognize that the list is
20 not all inclusive at this time and that it can be
21 appended, yes.

22 Q. In fact this is one of the things you
23 spoke about in terms of lists, that it should always be
24 used and the training should, I take it, focus on it
25 being used as not intended to be all in inclusive and

1 not to sort of limit the planners thinking about the
2 kind of concerns that should be raised in timber
3 management planning?

4 A. That's correct. And you have also
5 hit upon one of the fears that I have in using the
6 list; and, that is, that by having a checklist it does
7 often limit or stifle that innovative thinking that we
8 like to encourage to take place.

9 Q. All right. And that surely can be
10 addressed in training?

11 A. Yes, it can.

12 Q. And that is exactly what the deputies
13 contemplated happening?

14 A. Yes, it is.

15 Q. All right. Now, I take it that the
16 reason the deputies gave attention to this matter of
17 lists was not just presumably because they liked lists,
18 but in fact would you agree, Mr. Kennedy, that the list
19 serves to demonstrate -- what the list serves to
20 demonstrate is the environmental database on which
21 decisions are being made; is that correct?

22 A. It is a representation of the
23 environmental database, if I understand what you mean
24 when you use that phrase, in that it provides a
25 indication in a summary form of the kind of information

1 that may be available or may be present on a management
2 unit. It is not an entire list.

3 As we have indicated as well, it is meant
4 to address other resource features. For instance, the
5 forest resource inventory itself is not referenced here
6 in any way and, of course, that is a very important
7 part of the assembly/analysis of background
8 information.

9 Q. All right. Well, I want to come to
10 what sort of goes into the plan itself a little later
11 because the focus of this list, as I understand it, it
12 was on the training as opposed to actual plan
13 production itself. And I believe that was the focus in
14 the deputies' agreement; was it not?

15 A. I would not limit it to that, no. I
16 would certainly indicate that that was one of the
17 vehicles by which the dissemination of this information
18 was identified as being desirable.

19 Q. All right. But in any event, perhaps
20 I am overcomplicating, but we do agree, I take it, that
21 it is intended -- guides or lists of this type are
22 intended to give an indication of the database that is
23 available to and being used by the decision-makers; is
24 that a fair statement?

25 A. Not entirely, no, and the reason I

1 don't agree with you is that this in itself is not
2 indicating what information is available which I equate
3 to a database, this is just indicating the features
4 that may be encountered on a landscape.

5 Q. All right. Well, I think that is an
6 excellent point and it brings me really to my very next
7 question which relates to a discussion which you had
8 with the Chairman and Mr. Martel on this topic.

9 And given that it's, by my watch, five
10 after twelve, I'll give you the transcript reference,
11 it's Volume 144, on October 5th, page 24694 to 24781
12 and perhaps over the break before you come back you
13 might want to read those pages and we can pick up
14 there.

15 A. Thank you.

16 THE CHAIRMAN: And we might advise that
17 Ms. Swenarchuk has indicated that she will be here at
18 1:30, Mr. Edwards I think is in the room, he will be
19 here at 1:30.

20 So you can return at three, if you so
21 wish.

22 MR. KENNEDY: Thank you.

23 THE CHAIRMAN: Not if you so wish, return
24 at three, but you don't have to be here before then.

25 Thank you. We will adjourn until 1:30.

1 ---Luncheon recess taken at 12:05 p.m.

2 ---On resuming at 1:30 p.m.

3 THE CHAIRMAN: Thank you. Be seated,
4 please. We will comment later on the contents of the
5 brown bag.

6 All right, ladies and gentlemen, we are
7 going to proceed with dealing with the procedural
8 issues that were first raised last week and resulted in
9 the Board's draft procedural directions.

10 We indicated in those directions that we
11 would allow one opportunity for counsel to comment on
12 them, this is that opportunity; and, secondly, we would
13 defer a consideration of the proposal put forward by
14 Forests for Tomorrow to moving a portion of these
15 hearings to Toronto. And one of the reasons for
16 deferring it to today was the fact that the industry
17 associations were holding boards of directors meetings
18 and it was our understanding that Mr. Cosman was going
19 to be putting that proposal to his clients to at least
20 receive their position and instructions with respect to
21 that issue when we do get to discuss it.

22 So we would like to start off, since that
23 is the one issue that was not discussed in any way last
24 week, with the relocation issue.

25 And, as we understand it, Ms. Swenarchuk,

1 the proposal that was put forward was essentially that
2 the Board relocate these hearings to Toronto commencing
3 with the Industry's case which, based on the present
4 timetable, would put it some time in February we
5 believe and following the Industry's case would be
6 Forests for Tomorrow -- sorry, there would be one or
7 two parties in support, and these parties we would have
8 to further define and decide where the evidence with
9 respect to those parties would be held. If they
10 involved any of the satellite locations, we might well
11 travel at that point in time to those satellite
12 locations which were specifically involved.

13 Following that there would then be
14 Forests for Tomorrow's evidence put before the Board,
15 their chosen location for presenting that evidence
16 would in any event be Toronto, and following that I am
17 not convinced that the order has been ultimately
18 established for the remainder of the parties.

19 Now, certainly, Mr. Colborne, your client
20 wished to address the Board I believe in Kenora?

21 MR. COLBORNE: We had indicated that we
22 would probably wish to call our evidence at Kenora, but
23 we have a fair amount of flexibility on that, Mr.
24 Chairman.

25 THE CHAIRMAN: But it would be somewhere

1 in northern Ontario; would it not?

2 MR. COLBORNE: That would be our
3 preference, yes.

4 THE CHAIRMAN: Okay. And we are given to
5 believe that NAN wishes to presents its evidence in
6 Sioux Lookout and again, depending on the time of year,
7 that would probably be the preferred location for them
8 but, in any event, it would likely be northern Ontario.

9 And then the Ontario Federation of
10 Anglers & Hunters had also indicated that they wished
11 to present their evidence in Toronto.

12 Now, the tourist outfitters, Mr. Edwards,
13 I believe you were originally contemplating presenting
14 your evidence right here in Thunder Bay; is that
15 correct?

16 MR. EDWARDS: Yes, Mr. Chairman, that's
17 still our preference.

18 THE CHAIRMAN: And that is still your
19 preference. We then have any of the other parties
20 which may be involved in the satellite locations and
21 there is various locations for those parties on that
22 list. North Bay is one and we suspect there is some
23 others in northeastern Ontario as well.

24 So let us commence firstly with the part
25 of the proposal that deals with possibly relocating for

1 the Industry's case and perhaps, Mr. Cosman, we can
2 hear from you at this time on that subject.

3 MR. COSMAN: Thank you, Mr. Chairman.

4 Mr. Chairman, Members of the Board, the
5 matter of the application to move the hearings to
6 Toronto has been considered at meetings last week of
7 the boards of the Ontario Forest Industries
8 Associations and at a separate board of the Ontario
9 Lumber Manufacturers' Association.

10 The reasons for the original position of
11 the Industry as to why the hearings should be held in
12 the north was revisited and the reason given for the
13 proposed change was examined.

14 First of all, the reason that we have
15 given to the Board and which was accepted by the Board
16 at the outset of this hearing as to why this hearing
17 should be held in the north. The Industry made its
18 position clear to the people of the north and to this
19 Board that it wished to lead its evidence here because
20 this hearing is a matter of vital importance to the
21 people of northern Ontario. It concerns people of the
22 north and it deals with what can be done on Crown lands
23 in northern Ontario.

24 It is a fundamental principle of fairness
25 that tribunals follow that they hold hearings in

1 locations -- sorry, Mr. Chairman, it is a fundamental
2 principle of fairness that tribunals follow that they
3 hold hearings in locations where the people to be
4 affected by their decisions live. It is a principle
5 that is followed by this Board and other boards
6 operating in this province, and it is the people who
7 live and work in northern Ontario who will be
8 fundamentally impacted by the decision of this Board.

9 That was the reason given initially and,
10 Mr. Chairman, that reason has not changed.

11 THE CHAIRMAN: Okay.

12 MR. COSMAN: Then what the --

13 THE CHAIRMAN: Just a minute, let's take
14 it one by one. I think this would be preferable.

15 When you say that it is a fundamental
16 principle of fairness to hold the hearings where the
17 people are affected, what do you mean by the fairness
18 part, the fairness in affording those people the
19 opportunity to appear in front of the Board to attend
20 the hearing, to listen to the evidence being given to
21 the Board or what?

22 MR. COSMAN: Yes, and I will address that
23 in my submissions, Mr. Chairman, because we are not
24 only talking about the members of the public who come
25 in and out and, as you have noted, sometimes do not

1 come in, we are also talking about my clients, my
2 clients and their employees who are going to be the
3 witnesses at this hearing, live in this area, live in
4 the north.

5 I am going to be calling as evidence
6 people who live and work in northern communities and it
7 is these people who are going to be fundamentally
8 affected by your decision more than anyone else.

9 THE CHAIRMAN: How many people are you
10 going to be calling?

11 MR. COSMAN: We are going to be calling I
12 believe it is in the area of 65 witnesses on ten
13 panels. I was going to take you through that, Mr.
14 Chairman, to give you a breakdown of essentially the
15 way in which we propose at this time to lead our
16 evidence, but the vast majority of those people are
17 from the north. But I am going to come to that, if you
18 will be so kind to bear with me for a few minutes.

19 THE CHAIRMAN: Okay.

20 MR. COSMAN: Because I am going to come
21 to what might be a proposal that might assist in some
22 respects.

23 THE CHAIRMAN: Very well.

24 MR. COSMAN: I come back to my initial
25 point that the fundamental principle that we are

1 talking about and the reason given as to why our
2 clients who live and work here on land here want to
3 testify here has not changed, and what has changed and
4 what has prompted this application, and it is one
5 thing, there has been a feeling expressed by this Board
6 and felt by the parties that the hearing is taking too
7 long, that is really what has prompted this particular
8 application.

9 So it's necessary then, Mr. Chairman, to
10 examine that and to balance that with the other
11 interests and the other principles that are affected.
12 The question must be: Will moving the evidence of
13 certain parties to Toronto save time for the hearing,
14 and before attempting to do that and to examine that I
15 would like to just examine some of the other principles
16 and factors that must be considered in the balance.

17 First of all, as a matter of fairness
18 there is a feeling expressed by our clients that it is
19 unfair that Forests for Tomorrow are getting their
20 choice of where they want to hold the hearing, the
21 Ontario Federation of Anglers & Hunters are getting
22 their choice as to where they want to hold the hearing,
23 the MNR has had its choice as to where it wishes to
24 leads its evidence at the hearing, Mr. Colborne and Mr.
25 Hunter I believe the Board has indicated will be given

1 their choice as to where they want to hold the hearing
2 for their evidence, so in the end it's left that only
3 two parties are before you as parties who won't be
4 getting a similar opportunity to hold the hearings in
5 the area where their employees live and work. So that
6 is the first principle.

7 Secondly, Mr. Chairman, the length of the
8 hearing to date is in no way the fault of our clients
9 and, because the Ministry case has extended beyond its
10 original projected time, its anticipated time for
11 completion, what is happening is because of that, the
12 choice of where our witnesses will testify is in issue
13 and may be taken away from our clients, and that we
14 consider to be unfair.

15 As I have indicated to you, the majority
16 of our witnesses are from the north and live and work
17 here and it is their life and their work which is in
18 essence the issue before this tribunal.

19 Another factor that has to be considered.
20 The Industry, notwithstanding any belief of the
21 problem, is not a bottomless pit of money, we are
22 talking about northern Ontario companies operating in a
23 highly competitive environment, some of those
24 companies -- many of those companies are family owned
25 saw mill businesses and it is fair, I suggest, that

1 their employees who will be testifying should be
2 allowed to testify in the north where they live and
3 work.

4 But now I come to the fundamental and
5 crucial issue; that is, the suggestion that we may save
6 time because of course it is our clients' interest as
7 in the interest of all parties that time be saved.

8 Ms. Swenarchuk has suggested that by
9 holding the hearings in Toronto we may be able to sit
10 four days instead of three. Mr. Chairman, we have
11 organized -- or the Board has directed rather, the
12 manner in which the hearings are to be held in Thunder
13 Bay to take into account the lives of the people who
14 must travel to Thunder Bay regularly in order to
15 testify. The same kind of courtesy must be extended to
16 the witnesses who are going to be coming from far
17 reaches of the north to testify, and if the hearings
18 were moved to Toronto, this is really a serious issue -
19 unless you are going to have people leaving remote
20 communities on Sunday morning and getting back on
21 Saturday - as to whether or not the time will be saved
22 in Toronto.

23 The hearing could sit four days there as
24 here with tremendous inconvenience, but it's my
25 suggestion and submission that the same courtesy that

1 was being extended to the people who have to travel to
2 Thunder Bay must be afforded to people from the north
3 who would move to Toronto or would have to travel to
4 Toronto.

5 So in that respect, Mr. Chairman, it's a
6 lot easier to get from Toronto to Thunder Bay than it
7 is from many remote northern communities to Toronto for
8 purposes of testifying.

9 So I have four points in summary; and,
10 that is: First of all, it's fundamentally wrong to say
11 that the north has had its share of the hearing time.
12 This hearing is being held in the north by the Ministry
13 and as proposed by our clients because that is where we
14 live and work and that is because that is where the
15 area of the undertaking is located.

16 Secondly, we suggest that a fundamental
17 principle that the hearing should be held in the north
18 as the area affected unless an exceptional reason is
19 made for moving it.

20 Thirdly, when you take into account the
21 reason for moving it being to save time, and if you
22 take into account the other factor being that witnesses
23 from the north are going to have to travel at greater
24 expense and disruption to their personal lives to the
25 south, and unless the same kind of convenience is given

1 to them as is given by the Board to those of us from
2 Toronto who come to Thunder Bay, the saving of time
3 will be diminimus.

4 And, fourthly, because other estimates
5 have been wrong, the people in the north should not
6 bear the consequences and be prohibited from testifying
7 where they live and work.

8 Now, Mr. Chairman, that is our
9 fundamental position having revisited the matter that
10 this hearing should be held in the north where parties,
11 such as our clients, which are located here essentially
12 indicate they wish to have their evidence heard here.
13 In the same sense that Ms. Swenarchuk's clients in
14 Toronto may wish to have the evidence of her clients
15 heard there, that is fine and we support that, the same
16 way that Mr. Hunter's clients want to testify where
17 they live, we support that as well.

18 If the Board considers that it wishes to
19 compel us to conduct our case in Toronto or part of it,
20 I can tell the Board that having examined it there is a
21 way that we would reluctantly organize ourselves to
22 present part of our case in Toronto.

23 Our prime concern and our fundamental
24 position is that we should be allowed to testify here,
25 but we are going to have ten panels, as I have

1 indicated. The first two panels are socio-economic
2 panels, the witness statements for which have already
3 been delivered, and those panels, Mr. Chairman, without
4 a great deal of disruption to us could be held in
5 Toronto. For one panel we are dealing with consultants
6 from the south, from the other panel we are dealing
7 with Industry executives and for those two panels we
8 would, of course, follow your direction if you wish to
9 have us split our case to hold those two panels in the
10 south.

11 THE CHAIRMAN: What kind of time are we
12 talking about, assuming four days maximum for direct on
13 the two panels combined?

14 MR. COSMAN: All right. Our projection
15 is that those two panels will be completed in three to
16 four weeks.

17 The next five panels, Mr. Chairman, are
18 panels where the -- are primarily operations panels
19 where primarily operations people from the north will
20 be testifying and they consist of wood supply, case
21 study introduction and overview, access, harvesting and
22 protection, and for those five panels we would strongly
23 submit that we be allowed to present those panels in
24 Thunder Bay.

25 The final three panels -- and those, in

1 terms of timing, we anticipate one and a half to two
2 months.

3 The final three panels, renewal, effects
4 and planning, these panels have a mix of consultants
5 and industry people. We anticipate approximately one
6 month of evidence for those three panels, although we
7 would prefer, because of the northern representatives
8 on those panels, to have those panels heard in Thunder
9 Bay.

10 If you wish to have us divide our case in
11 any fashion those three panels along with the first two
12 panels would be the ones that could most easily be held
13 in Toronto.

14 And that would mean, Mr. Chairman, if it
15 is done in that fashion, approximately one half of our
16 case would be heard in Thunder Bay and one half in
17 Toronto and in terms of the organization of that
18 alternative proposal that I put before you, the last
19 three panels would lead into the case that Forests for
20 Tomorrow wishes to conduct in Toronto, so it would
21 follow that those three panels and Ms. Swenarchuk would
22 be heard one following the other both in Toronto.

23 And as far as the first two panels are
24 concerned, that would be - I am not sure yet as to when
25 it would start - but that three to four-week period

1 could be separated out for a hearing in Toronto
2 without -- and perhaps most easily and without a great
3 deal of hardship for us, but for the operational panels
4 we would strongly urge upon the Board that we be
5 allowed the same choice as the other parties who appear
6 before you.

7 Those are my submissions.

8 THE CHAIRMAN: All right. Mr. Cosman,
9 did the Board understand it correctly when you were
10 dealing with extending the courtesy and taking into
11 account the lives of the participants, that you were
12 objecting if any part of this hearing was moved to
13 Toronto, and this includes by the way the cases for
14 Forests for Tomorrow and OFAH which are already
15 scheduled for Toronto moving to a four-day week from a
16 three-day week?

17 In other words, for your alternative
18 suggestion, your first two panels and the last three
19 panels being heard in Toronto, would you be
20 contemplating a four-day week or a three-day week?

21 MR. COSMAN: Mr. Chairman, we would love
22 to have a five-day week frankly, but the problem is if
23 you are to be consistent as in the extension of
24 courtesy to people who must attend a very lengthy
25 hearing, you should give the same courtesy to the

1 people who are going to be coming from the north.

2 So in that regard, and I would probably
3 have to do it on a panel by panel basis, tell you where
4 the people are coming from so a decision might be made
5 appropriately, having regard to that fact; and I think
6 that the same way that people from Toronto have a
7 Sunday dinner with their families in Toronto, that
8 should not be taken away from witnesses from the north.

9 THE CHAIRMAN: Well, the Board doesn't
10 wish to take anything away from anybody, but we are
11 reaching a stage in the hearing where I think you are
12 correct in identifying up front that the concern is the
13 overall length of these hearings. So regardless of
14 what the proposal is in terms of location, the Board
15 would be looking for a mechanism by which to increase
16 the amount of hearing time per week, whether by adding
17 an additional day - frankly, we find it difficult to
18 consider sitting longer hours per day than we are
19 already sitting - I think you will agree that we are
20 sitting probably longer than any other tribunal or
21 court in the country in terms of hours per day, but the
22 prospect of shortening the overall length of the
23 hearing will, in our view, regardless of the location,
24 be dependent firstly on some of the other mechanisms we
25 are trying to introduce; but, secondly, on adding more

1 time for hearing evidence and that may necessitate
2 adding an extra day per week.

3 MR. COSMAN: That may be, Mr. Chairman,
4 but what I am suggesting is that if that is to be done
5 for Toronto, then it should equally be done for Thunder
6 Bay.

7 THE CHAIRMAN: Well, the point is here we
8 are at a point in the hearing where we can't go back.

9 MR. COSMAN: I am speaking prospectively.

10 THE CHAIRMAN: Right, okay. Thank you,
11 Mr. Cosman.

12 Well, firstly we can canvass the views of
13 the other parties with respect to Mr. Cosman's specific
14 submission or we can proceed to hearing submissions
15 from any of the other parties with respect to their own
16 clients position as well with respect to a move.

17 Perhaps we will do the latter at this
18 point then come back after we have got positions more
19 or less on the table.

20 We would like I think at this point to
21 hear from the Ministry as to what their position is.

22 MR. FREIDIN: Mr. Chairman, my comments
23 will be short. I need not argue the case on behalf of
24 Mr. Cosman or anyone else. It's obvious that
25 ultimately it's the Board that is going to have to

1 determine where the balance of this hearing is going to
2 be held.

3 We acknowledge that we've had the
4 opportunity to have this hearing in Thunder Bay which
5 was the process that the Board put in place at the
6 outset and we would hope that the Board would continue
7 to hear and respect the wishes of other parties, not
8 just the industry, but other parties who indicate that
9 they have a preference as to where they feel it is
10 appropriate for them to present their case.

11 THE CHAIRMAN: Do we take by that, Mr.
12 Freidin, that you would not be objecting to the Board
13 relocating a portion of the hearing to Toronto?

14 MR. FREIDIN: We would make no specific
15 submissions in that regard. It's the other parties who
16 are going to be affected by this particular matter. We
17 have had our case in Thunder Bay and I think it's most
18 appropriate that you hear the submissions of others on
19 that matter.

20 THE CHAIRMAN: Okay. Let's move on to
21 the Ministry of the Environment. Mr. Campbell?

22 MR. CAMPBELL: We have no submissions on
23 this matter, Mr. Chairman.

24 THE CHAIRMAN: Ms. Swenarchuk, do you
25 have any further submissions to which you made last

1 week?

2 MS. SWENARCHUK: I think they would all
3 fall into the category of replying to Mr. Cosman, Mr.
4 Chairman, so I perhaps the other parties should
5 proceed.

6 THE CHAIRMAN: Okay. Perhaps we
7 should -- Mr. Colborne?

8 MR. COLBORNE: Mr. Chairman, my clients
9 have no particular position on the question of where
10 the Industry will give its evidence. I will say,
11 however, that we do have some sympathy with any
12 procedural change that will speed the process and which
13 will aid those parties who are under disabilities in
14 terms of funding and so on on account of the length of
15 the hearings.

16 THE CHAIRMAN: Would your clients, Mr.
17 Colborne, have any difficulty if the Board relocated
18 part of the hearing to Toronto and went to a four-day
19 week?

20 MR. COLBORNE: Insofar as the evidence of
21 the Industry is concerned, no; that is, subject only to
22 the one qualification which I think is included in the
23 original proposal and that is that allocations of
24 funding might have to be adjusted somewhat.

25 THE CHAIRMAN: You're talking about the

1 intervenor funding?

2 MR. COLBORNE: Exactly.

3 THE CHAIRMAN: With respect to increasing
4 the number of days for the hearing per week in the
5 event that we allowed the parties who wanted to present
6 in Toronto to present there as opposed to relocating
7 the Industry's case to Toronto, what is your position
8 on a four-day week?

9 MR. COLBORNE: It has been mentioned that
10 residents of northern Ontario would have to provide for
11 a lot of travel time if the Board were to sit for four
12 days, but again restricting my comments to the case for
13 the Industry, that would not affect us particularly
14 because my clients are not in a position where many of
15 them and for large portions of the hearing any of them
16 are actually able to come and hear the evidence.

17 THE CHAIRMAN: All right. But what about
18 when Forests for Tomorrow presents their case in
19 Toronto, it may last four to five months, and if we
20 move to a four-day week, I am talking about the ability
21 of other parties to participate in terms of
22 cross-examination and things like that.

23 MR. COLBORNE: We would not be prejudiced
24 by that, provided the intervenor funding were adjusted
25 and, in case I am not being clear, I am talking only

1 about the fact that right now Air Canada and Canadian
2 Airlines International are flying people here; whereas
3 if the hearing is changed, they are going to be flying
4 people there. But I don't think the net difference in
5 terms of expense would be very great. It's just a
6 question of who would be paying for the planes.

7 THE CHAIRMAN: Well, that's correct, and
8 we assume that - this Board has no knowledge of this -
9 but we assume that the funding allocations that were
10 made to date by a funding panel were based upon an
11 indication of where the various parties would be
12 presenting their case through their initial choice;
13 would that not be the case?

14 MR. COLBORNE: That's quite right, Mr.
15 Chairman. I realize you are not the funding panel, but
16 your assumption is correct.

17 THE CHAIRMAN: So that really any
18 reallocations of funding would apply, so to speak, in
19 the event that the Board were to change the assumption
20 upon which that funding had been made in the first
21 place; in other words, by redirecting for instance
22 where the Industry's case was to be heard.

23 MR. COLBORNE: Yes, that is my
24 understanding.

25 MS. SWENARCHUK: Mr. Chairman, the

1 allocations of funding were based partly on budgets
2 presented by all parties.

3 THE CHAIRMAN: But you would have
4 indicated where you were going to present your case
5 when presenting that budget?

6 MS. SWENARCHUK: A certain part of the
7 allocation has to do with travel accommodation
8 expenses. To the extent those are changed, some
9 discussion is in order.

10 THE CHAIRMAN: Very well. All right.
11 Mr. Edwards?

12 MR. EDWARDS: Mr. Chairman, our
13 preference remains to have our case presented here and
14 I think it's true that if we were obligated to present
15 our case in Toronto that we probably wouldn't have a
16 case to present. I think the costs would be so
17 substantial that we would be forced to withdraw.

18 With respect to the proposal to move the
19 Industry's case to Toronto, I have some sympathy with
20 Mr. Cosman's suggestions that people should have the
21 right to present where they elect to; however, my
22 client will support anything which will tend to shorten
23 the hearing and I do believe that this proposal of four
24 days would tend to shorten the hearing. If we were
25 able to participate in Toronto, it would be totally

1 dependent upon financial circumstances and in the
2 absence of some relief in that fashion, it would be
3 impossible for us to participate whether it be a
4 three-day or a four-day week.

5 If we were able to participate, frankly a
6 four-day week is no worse or better than the three-day
7 week from the point of view of the presentation of the
8 Industry's case.

9 THE CHAIRMAN: Thank you. Do you have
10 any further submissions?

11 MR. EDWARDS: No, I don't, Mr. Chairman,
12 other than the fact that I think you are aware that the
13 intervenor funding panel has already made a ruling,
14 particularly with respect to the interest of my
15 clients, which I don't think can be easily adjusted and
16 this creates a real problem for us.

17 We obviously would want to cooperate in
18 assisting the expediting of the hearing and we ask the
19 Board to consider the fact that all of our clients are
20 in the north and the cost of attending in Toronto will
21 be so great that we just can't participate.

22 THE CHAIRMAN: Well, this Board can
23 advise that we have indicated to the funding panel that
24 in the event that this Board changed some of the ground
25 rules respecting the location of the hearing and

1 perhaps the number of hearing days involved, that we
2 might request the funding panel to reconsider its
3 funding allocations which might change as a result of
4 what this panel might do.

5 We have received an indication from the
6 funding panel that in the event that we made such a
7 request it would certainly be considered, although -
8 and I think we realize that and perhaps other counsel
9 might realize that - it might also require an amended
10 Order-in-Council with respect to the funding in order
11 for anything to be done in terms of a reallocation,
12 particularly in the case of parties which perhaps
13 didn't receive funding at all, but in the event of any
14 change in locale, might be impacted as a result of
15 that, and had those facts been known to the funding
16 panel when it considered their application, there might
17 have been a different result.

18 MR. EDWARDS: Mr. Chairman, my clients
19 made certain decisions and choices based on the belief
20 that the hearing would largely take place here and
21 obviously relies on that. A change in plan would be
22 quite difficult for them to adjust to; however, if some
23 reallocation were possible, I think it is the view of
24 my clients that a four-day hearing in Toronto for a
25 portion of the case at least would be not unreasonable

1 in all of the circumstances.

2 Clearly there is interest of the people
3 in the north to have opportunities to attend here, but
4 the Board through its lengthy hearings here has
5 addressed that to a significant extent and if some
6 portion of the hearing were to be held in Toronto, we
7 do not see that as such a prejudice as to outweigh the
8 overriding need to expedite matters.

9 THE CHAIRMAN: All right. Now, we would
10 like to hear the views of both ministries with respect
11 to the possibility, regardless of whether we change the
12 location for any of the parties, whether when we do
13 reach Toronto we go to a four-day week as opposed to a
14 three-day hearing week?

15 MR. COSMAN: Mr. Chairman, perhaps just
16 before the ministries do speak to that issue, I just
17 want to make it clear that our clients would certainly
18 support a four-day week in Toronto. That was not the
19 issue. My suggestion and submission was there should
20 be a consistency with respect to the balance of the
21 hearing in the north.

22 THE CHAIRMAN: All right. Well, that is
23 what we want to find out. We want to find out - thank
24 you, Mr. Cosman - whether or not there is objections
25 from any party that the Board move when we do reach

1 Toronto ultimately to a four-day hearing week to try
2 and pick up some time during what may end up being the
3 better part of a year spent in Toronto, and there could
4 be a considerable amount of time picked up by going to
5 a fourth hearing day.

6 And we feel that that is reasonable in
7 view of the fact that the majority of the parties would
8 not be required to be travelling up north and a great
9 number of the parties are located in the south.

10 That of course does not follow through
11 for everybody and given this undertaking and given the
12 vast expanse of the area of the undertaking, there is
13 no way, whether we sit in the north or the south, that
14 we can accommodate everybody equally, although we will
15 try to do so fairly.

16 Mr. Freidin, does the Ministry have any
17 objections to going to a four-day week?

18 MR. FREIDIN: Without knowing all of the
19 details it's hard to say yes or no. I think that I
20 would say that we could go with a four-day week,
21 however, I would hope that we would be able to have
22 enough flexibility built into that so that people would
23 not in fact be required to spend five or six days away
24 from home.

25 I think Mr. Cosman's point is well taken,

1 that as he might be able to indicate how his particular
2 witnesses can be accommodated maybe, you know, in some
3 cases four days -- sitting longer on the fourth day it
4 would be possible and other days it wouldn't.

5 We have concerns only that we would be
6 having people coming down from northern Ontario even
7 during the other parties' case, so generally going to a
8 four-day week we have no objection, as long as there is
9 enough flexibility built in that, if required, people
10 are not going to be in fact required to be away from
11 their homes for extended periods of time because of
12 travel problems.

13 THE CHAIRMAN: And when we move to
14 Toronto, how many people are you talking about?

15 MR. FREIDIN: I don't know, I haven't
16 even thought that far down the road. I just know there
17 will be people from northern Ontario who will be in
18 Toronto; some on a part-time basis, some on a full-time
19 basis.

20 THE CHAIRMAN: Mr. Campbell?

21 MR. CAMPBELL: Mr. Chairman, we will
22 support any and all measures which assist in moving
23 this hearing along, including a four-day week.

24 With respect to travel, I support my
25 friend Mr. Freidin's submissions that the Board should

1 be quite prepared to make adjustments to facilitate
2 travel. I also perhaps should add that having observed
3 Mr. Martel from time to time in the airport that it
4 sometimes seems easier to get to various parts of
5 northern Ontario by going via Toronto, or at least it's
6 a lot easier to get to Toronto from various parts of
7 northern Ontario than it is to get from one side of
8 northern Ontario to another.

9 So I agree, these travel matters have to
10 be taken into account, but I assume the Board will show
11 its usual common sense in those matters.

12 THE CHAIRMAN: Okay. Is there any other
13 party -- Mr. Axford, we didn't call upon you
14 specifically because we will be attending Red Lake and
15 we assume that you will be presenting your evidence in
16 Red Lake.

17 MR. AXFORD: Mr. Chairman, yes. There
18 are a couple of things that I think the Board should be
19 aware of.

20 For our organization it's just as easy to
21 come to Thunder Bay as it is to Toronto; it's difficult
22 in both cases; however, I certainly support Mr. Cosman
23 on the issue of northern testimony, because whatever
24 the Board chooses to rule on ends up having to be
25 acceptable to the people that live and work in the

1 north.

2 If we were dealing with the forests
3 between Toronto and Barrie that would be one thing, but
4 we are basically dealing with forests that are up here.
5 And if the public is not comfortable with the fact that
6 decisions were made in other places or here, it's a
7 very important issue to the acceptability of whatever
8 the Board rules that has to be taken into
9 consideration.

10 THE CHAIRMAN: But, Mr. Axford, the Board
11 is cognizant of those concerns and that in fact was
12 much of the reason behind it's initial decision to hold
13 the hearings in northern Ontario. And up to this point
14 in time we have been here approximately 17 months, we
15 will be here a number of months more in any event to
16 accommodate the satellite hearings as well as hearing
17 some of the other parties specifically in the north.

18 You cannot get away from the fact that
19 this decision is going to be made by persons, no matter
20 where they are from, two of them are from southern
21 Ontario, one is from northern Ontario, and it is a bit
22 of a fiction to assume that the decision is going to be
23 made in a particular location; it is being made in fact
24 I would suggest by people, they happen to reside in
25 various locations around the province. That is No. 1.

1 No. 2, our real concern in terms of where
2 we hold the hearing is providing for fair access to
3 persons who wish to participate in these proceedings,
4 and by participating we mean not only those persons who
5 wish to participate by representation by counsel or
6 representatives, and we have a number of the parties
7 here today who are represented by counsel who are
8 physically resident in the south, they are represented
9 by counsel and consultants, many of whom reside in the
10 south and, in fact, there are people here who are
11 represented by local council and by consultants who
12 reside locally in the north.

13 I think what our major concern is: Where
14 can we provide access to those who wish to participate
15 in these proceedings, and that is the overriding
16 concern. And we anticipate that if we relocate part of
17 the proceedings to Toronto, there will be obviously
18 some dislocations to some of the parties who want to be
19 physically present at the proceedings. It doesn't
20 necessarily mean they won't be represented because they
21 are not physically present, because many of the parties
22 are represented by counsel and they represent groups
23 which comprise a large number of people, some of which
24 reside in the south and some of which reside in the
25 north.

1 So I think the Board wants to dispel
2 this - I don't mean to call it a fiction - but this
3 idea that somehow by sitting in Thunder Bay it
4 necessarily implies that each and every decision made
5 in connection with this matter is being made in the
6 north. It is being made by this Board ultimately, and
7 we will be taking fully into account, we think, the
8 views of residents of all of Ontario, whether it's
9 northern Ontario or southern Ontario; eastern Ontario
10 or western Ontario.

11 So that we are mainly concerned about how
12 can we provide access to all of those who wish to
13 participate in the fairest manner, and that is what we
14 are considering.

15 Ms. Swenarchuk, can we call on you now to
16 respond firstly to Mr. Cosman's representations because
17 it was your proposal initially?

18 MS. SWENARCHUK: Mr. Chairman, I don't
19 propose to revisit totally the arguments, including the
20 factual evidence that was laid before you the last time
21 this issue was discussed, I merely want to note that
22 Mr. Cosman has reiterated the Industry's position in
23 pretty much I think the same terms it was stated
24 before, and so some reference to some of the other
25 elements at play I think is justified.

1 He of course has indicated that the
2 hearings should be held in the north because its of
3 vital importance to people of the north as to how
4 timber management is carried out on Crown lands in
5 northern Ontario.

6 Let's just recall that the north of
7 Ontario itself is very large, holding the hearings in
8 Thunder Bay does not provide realistic access to the
9 process by people in eastern Ontario; that timber
10 management occurs on Crown lands as far south as the
11 Muskokas in Ontario as well as right through the Ottawa
12 Valley and through much of eastern Ontario and we are
13 not merely talking about an industry that occurs in
14 Thunder Bay and north and west of Thunder Bay.

15 And travel to Thunder Bay, as we have
16 noted earlier in the hearings, from eastern Ontario is
17 very difficult; travel to Toronto from those areas is
18 frequently easier than travel to Thunder Bay.

19 We brought to your attention earlier as
20 well that there are at least as many timber industry
21 related jobs in southern Ontario as there are in
22 northern Ontario.

23 An element that has been left out of the
24 discussion today totally is the secondary motivation
25 that we brought to your attention in proposing the move

1 again and that is the question of public cost.

2 Numerous individuals who now must travel to Thunder Bay
3 at public cost and be accommodated here will not have
4 to travel here and be accommodated here if the hearing
5 is moved to Toronto and that, of course, includes the
6 Board members themselves.

7 I believe it's the Chairman who talked
8 about the unacceptability of a five-year \$20-million
9 hearing. We concur absolutely with that suggestion,
10 and we are convinced that in terms of travel, yes,
11 there may be some reallocation amongst the parties but
12 there will definitely be a net reduction in public cost
13 for travel and accommodation if the hearings are moved
14 to Toronto.

15 Now, Mr. Cosman underlined that some of
16 his clients are small family owned companies from
17 northern Ontario. That is undoubtedly true, but we
18 also know that within those organizations are some of
19 the largest corporate entities in the country, most of
20 whom as well we've heard earlier in the hearings have
21 head offices in Toronto.

22 Again, it's my understanding that the
23 Board's organization of the hearing in Toronto - and
24 Mr. Cosman referred to accommodating people coming to
25 Thunder Bay to testify - my understanding is that the

1 process the Board has evolved here is not merely for
2 those who testify here but for all the other people who
3 must travel here, and I think when we consider a move
4 to Toronto and the justifiable concern of parties about
5 witnesses, for example, being away from their families
6 longer because they are going to Toronto than
7 testifying in the north, I think the advantage those
8 witnesses have over all of us is that they will make an
9 appearance over a certain number of days or weeks and
10 then they are finished. Whereas all the other
11 individuals here whose travel time as been tied up has
12 been tied up for months and years.

13 So I think really those people who Mr.
14 Cosman has identified as of concern because they're
15 industry witnesses from northern Ontario who will be
16 coming to Toronto are in a different category and their
17 lives will be less disrupted than the entire team that
18 you see before you, of which you are in a sense
19 members, whose lives have been involved in this case
20 for such a long time.

21 It might well be that those witnesses
22 would prefer to spend some longer days in Toronto or a
23 few more days in Toronto in one time and make fewer
24 trips than to come back repeatedly. In other words,
25 their lives are disrupted hopefully for a short time.

1 We don't plan to cross-examine any one of them for a
2 year, I assure you.

3 As you have said yourself, Mr. Chairman,
4 Mr. Cosman indicated that it's wrong to say that the
5 north has had its period of hearing time. Well, we all
6 know that there will be more hearing time in the north
7 with the satellites hearings and with those parties
8 that are going to be presenting their cases here.

9 I was particularly pleased that Mr.
10 Cosman referred to his first two panels and the
11 possibility of holding them in Toronto since my look at
12 them indicates that there are five witnesses on those
13 panels, one of whom is from northern Ontario, one from
14 Ottawa, and three from Toronto/Mississauga.

15 So in conclusion, Mr. Chairman, I think
16 all the reasons that we indicated earlier in the
17 hearing still come into play. This is an industry
18 which occurs over much of Ontario, not only northern
19 Ontario, and in which the benefits and costs are
20 certainly spread over the entire province and those
21 factors plus the expedition of the hearing, in our
22 view, justifies a move.

23 THE CHAIRMAN: Thank you. Are there any
24 further submissions with respect to the matters we have
25 just discussed?

1 Mr. Cosman, do you have any further reply
2 to those submissions by Ms. Swenarchuk?

3 MR. COSMAN: No, Mr. Chairman.

4 THE CHAIRMAN: Okay. We will move to
5 another topic then. By the way, before we go to the
6 other topics, we just wish note for the record, we have
7 received a letter from the Ontario Federation of
8 Anglers & Hunters dated October 30th, 1989. The Board
9 wishes to advise that it has read this letter and its
10 contents and we will take into account the matters
11 raised therein.

12 It doesn't intend during the course of
13 this discussion to refer to all of the submissions made
14 in that letter, it will take them into its overall
15 assessment of these matters.

16 Okay. Now, moving on to the other
17 matters that we have before us. The draft procedural
18 directives that we have put forward to the parties
19 dated October 25th. I don't think there is much to
20 deal with on the first page for it simply outlines the
21 Board's concerns with the length of time of this
22 hearing.

23 Moving to page 2, the presentation of
24 direct evidence. Do any of the parties have any
25 comments on the Board's indication that it will impose

1 a time limit of a maximum of two days on direct
2 evidence with the parties requiring leave if they wish
3 to have that extended?

4 MR. COSMAN: Mr. Chairman, we have stated
5 our position earlier and I don't think we will take the
6 Board's time to repeat it, other than to say that, as
7 we said when we met last on the procedural matter, that
8 we feel that we can and would use our best efforts to
9 meet a two-day time limit per panel.

10 We felt that it was inappropriate as a
11 legal matter to compel it, but that may be covered by
12 your provision to allow leave to call such additional
13 evidence as may be appropriate in the circumstances.

14 THE CHAIRMAN: Well, it would be the
15 Board's intention to impose the time limit, if parties
16 wish an extension they can apply for leave and the
17 Board will review those requests on a case-by-case
18 basis.

19 We want it understood though that we do
20 not expect in every instance for parties simply to rise
21 at the end of two days and request leave to extend it
22 further. We would expect a reason which is sufficient
23 for us to grant that leave.

24 Okay. The next--

25 MS. SWENARCHUK: Mr. Chairman?

1 THE CHAIRMAN: --matter which I -- sorry,
2 Ms. Swenarchuk?

3 MS. SWENARCHUK: A matter of wording.
4 The wording of the draft is a little vague, perhaps
5 deliberately there. Limit the presentation of direct
6 evidence to a maximum of two hearing days; do you mean
7 per panel?

8 THE CHAIRMAN: Yes, that is exactly. Not
9 per witness, per panel.

10 MR. CAMPBELL: Per case.

11 THE CHAIRMAN: And not per case, per
12 panel, and that is a good point that we should clear
13 up.

14 All right. Moving to the second matter
15 which is the implementation of this formal negotiating
16 process. The Board has attempted to set out what it
17 derived from last week's discussions and attempted to
18 provide some guidance to the parties on the next page
19 as to how it foresaw that negotiating process to take
20 place.

21 We are also putting forward on the table
22 a further suggestion; and, that is, that the
23 negotiations in fact take place in Thunder Bay as
24 opposed to Toronto. Our reasoning behind that is we
25 feel it will be less distracting to many of the parties

1 involved and that if the negotiations in fact took
2 place here, that the parties could get down to some
3 serious and intense negotiations.

4 Not being distracted, and I am referring
5 specifically to several of the counsel here, by other
6 demands from their offices, clients or other persons
7 who may wish to, in some way, interrupt what we
8 consider to be the purpose of this two-week
9 adjournment; and, that is, to get down and seriously
10 negotiate.

11 MS. SWENARCHUK: Mr. Chairman, for the
12 same reasons as before I oppose that suggestion, and I
13 certainly submit that reasonable counsel will either
14 approach these negotiations with an aim to maximizing
15 the efforts or not and that putting everyone in Thunder
16 Bay is not to anyone's particular advantage, it's in
17 fact a disadvantage to all of us who don't have office
18 structures in Thunder Bay in terms of documentation
19 revisions, all those kinds of questions.

20 We are of course also returning then to
21 the cost questions that met us before. So our
22 submission would be, at least leave it to the parties
23 to decide where.

24 THE CHAIRMAN: Well, we just throw that
25 out for your consideration. Perhaps subclause (c) of

1 the second paragraph will help to some extent because
2 the Board would expect to have addressed in the report
3 the names of everyone who took part, the length of time
4 for the negotiating sessions and the dates upon which
5 those sessions occurred.

6 So that much as we all experienced in
7 primary school, we will in essence want to know that
8 the parties that were expected to take part did so, and
9 that the negotiating sessions were of sufficient length
10 to produce hopefully a good result.

11 We don't want to be involved in granting
12 a two-week adjournment only to find out that the
13 parties met for a couple of hours and then proceeded on
14 to do other things, so that the net result of the
15 negotiating session in terms of removing issues from
16 the table ends up being minimal.

17 Okay. We would like to hear the parties'
18 comments, if any, with respect to the written report
19 that the Board expects out of those negotiations and we
20 would like to know if any of the parties have any
21 difficulty with the items that that report should in
22 fact contain?

23 (no response)

24 Well, if there is nothing specific. Mr.
25 Colborne, do you have...

1 MR. COLBORNE: I am not clear in reading
2 the draft what the Board contemplates doing if there is
3 lack of agreement among the parties as to the contents
4 of this report. Do you contemplate receiving a number
5 of minority versions, or --

6 THE CHAIRMAN: No, we were hoping that
7 the parties would be able to end up with a report that
8 all could support, including the parties that did not
9 agree with a specific issue, their views would be
10 stated as one of the subsections to that report, but we
11 would hope that all of the parties can end up, in
12 effect, submitting a joint report to the Board.

13 We hadn't really contemplated the
14 situation where the parties couldn't even agree on the
15 form of the report and that is why we set out these
16 various categories that we would like to see addressed.

17 MR. COLBORNE: My concern would be that
18 this may in effect undermine the status of parties as
19 parties and all of a sudden parties become people with
20 one vote and if they get out voted all of a sudden they
21 become something less than they ought to be, which is
22 full parties.

23 I don't know if this would happen,
24 perhaps I am just expressing my concern.

25 THE CHAIRMAN: No, we don't view any of

1 the parties as less than full parties. What we hope to
2 achieve from this report is that it would say, for
3 instance, in subparagraph (d) sub-Roman numeral (i), it
4 would set out the issues upon which the parties can
5 agree. So if there is a particular issue upon which
6 all of the parties to the negotiating session can
7 signify agreement, effectively that will be removed
8 from having to be addressed at the hearing
9 subsequently.

10 If in fact five of the six parties - I
11 don't know how many would be part of this negotiating
12 process - but for the purposes of the example I am
13 going to give, suppose it's six. If five of the six
14 parties agreed that this issue was not in contention,
15 there was an agreement with the position, for instance,
16 taken by the Ministry on that issue, it didn't have to
17 be further addressed, but the sixth party did not, then
18 presumably the sixth party in that report would
19 indicate that it doesn't agree and would indicate what
20 position it wishes to take with respect to that issue.

21 And then going further down that page, we
22 would be dealing at the hearing with essentially the
23 evidence from the party that did not agree.

24 MR. COLBORNE: I understand you, Mr.
25 Chairman, and I do not take formal disagreement. I

1 want to say one other thing just for the record. I
2 suppose I would be also concerned that when we get to
3 the bottom of the page, and there is reference to where
4 a particular issue is not in dispute, then that party
5 shall not address that issue and so on, I would remind
6 you, Mr. Chairman, that quite often when evidence is
7 being called it's likened to building a house block by
8 block and if the parties who will be calling their
9 cases later in the hearing end up being restricted to
10 just critiquing the house that is already there as
11 opposed to trying to indicate how --

12 THE CHAIRMAN: No, Mr. Colborne. We
13 assume that you are going to have a case to put forward
14 to the Board that is to some extent in issue with that
15 proposed by the applicant, by MNR.

16 MR. COLBORNE: Yes.

17 THE CHAIRMAN: We are talking about where
18 your client's interest, for instance, coincide with
19 what the Ministry has put forward, we want to avoid
20 having to deal with that evidence further at the
21 hearing, we just want to really be dealing with those
22 areas which are in dispute by the various parties to
23 the proceedings.

24 And what we are asking in this
25 negotiating session is for you to try to come to

1 agreement, even on some issues that are at this point
2 in time in dispute. In other words, you sit around,
3 you talk, you discuss it and perhaps you can suggest
4 that the Ministry puts forward another term and
5 condition that would better address your problem and
6 they might, in this negotiating session, agree to that;
7 in which case you have an agreement on an issue that
8 was formerly in dispute which, as a result of the
9 negotiating process, is no longer in dispute. That
10 would then be identified and off at table.

11 MR. COLBORNE: Yes, I understand that,
12 Mr. Chairman. I hope you understand me though when I
13 say that the issue that could arise need not be seen
14 only as a list, which is a very linear way of seeing
15 them. The issues which may arise might be better seen
16 as in a more wholistic sense and I wouldn't want to be
17 attempting to call evidence on behalf of my client and
18 in effect being prevented from building the foundation
19 and so on for an important point that we think ought to
20 be made, simply because in the course of building that
21 foundation we are canvassing within areas in which
22 there doesn't seem to be much dispute. It's just not
23 quite as black and white on each point as that.

24 THE CHAIRMAN: All right. Well, the
25 Board can appreciate that, but I think the Board will

1 have to address those kinds of concerns on an ad hoc
2 basis; in other words, to see where the examination is
3 going at the time it is being addressed and decide
4 whether or not that is an issue which needs more
5 exploring to get across the point that you may wish to
6 put across.

7 You may be able to, for instance, come
8 out with a conclusion, rather than building it, and
9 putting the conclusion before the Board and the Board
10 acknowledging that a lot of that has been agreed to.

11 MR. COLBORNE: Yes. That is the only
12 point I wanted to make. Thank you.

13 THE CHAIRMAN: Okay.

14 MR. FREIDIN: Mr. Chairman, if I might
15 just make a comment along the same lines.

16 I think the thing that was perhaps of
17 concern to Mr. Colborne - and, Mr. Colborne, I
18 apologize if I misinterpreted your comments - is
19 similar to a concern I had arising out of paragraph sub
20 III under scoping of issues subparagraph (c) which is
21 again a section which indicates:

22 "That, wherever possible, parties should
23 focus their cross-examination by
24 specifically relating the same to
25 positions put forward in the draft terms

1 and conditions filed by MNR and/or any
2 other party cross-examining."

3 I think in terms of Mr. Colborne's
4 submission, the comment I make about his submission and
5 the comment I would like to make about subparagraph (c)
6 is that I think it's recognized by counsel that a
7 classic purpose of cross-examination is often to seek
8 particularly from expert "A", who might be called by a
9 party with whom you have no difference whatsoever,
10 admissions which will be helpful to you in terms of
11 taking a position in respect of party "B" with whom you
12 do differ. That is done all the time.

13 And I think that, and I assume that when
14 in subparagraph III, sub (c) you said that:

15 "Parties who wish to cross-examine upon
16 issues identified in their statement of
17 issue shall, wherever possible, focus
18 their cross-examination..." et cetera,
19 that the 'wherever possible' was put in there partly in
20 recognition of the fact that cross-examination is, as I
21 have indicated, quite frequently used for the purposes
22 that I have indicated.

23 And if I am correct in that, then I
24 assume that the concern that Mr. Colborne had was
25 somewhat similar to that in relation to subparagraph

1 (d). But I only make that comment, let Mr. Colborne
2 speak for himself.

3 THE CHAIRMAN: Well, certainly the Board
4 is aware of the purpose of cross-examination in its
5 usual sense. Again, I think the Board is quite
6 prepared to allow flexibility to the extent that issues
7 upon which there has been substantial agreement do not
8 occupy any further time at the hearing either in direct
9 or in cross, and we feel at this point in time that the
10 parties should be able to reach substantial agreement
11 on a number of issues that have been put forward, Mr.
12 Freidin, firstly in your statement of draft conditions,
13 and we suspect will be the subject of draft conditions
14 by all other parties.

15 When those are all on the table, we feel
16 the parties should be able to look at them, negotiate
17 amongst themselves and indicate by give and take that
18 if the draft condition concerning this issue were
19 formulated in such and such a way, then none of the
20 parties or most of the parties have no further problem
21 with that issue, that issue is then gone,
22 substantially. To the extent that it isn't for any
23 particular party, that issue would still be on the
24 table.

25 MR. FREIDIN: I understand you and I

1 think that will be the goal that we will all be
2 attempting to achieve, but I still stand by the
3 comments that I made that there will be occasions where
4 some party may want to cross-examine an expert with
5 whom they have no difference of opinion to support
6 their case against someone who they do have a
7 difference of opinion with.

8 THE CHAIRMAN: And in those cases it can
9 be put to the Board on that basis and the Board will
10 rule accordingly.

11 MR. FREIDIN: Thank you.

12 THE CHAIRMAN: Mr. Cosman?

13 MR. COSMAN: Yes. Mr. Chairman, we
14 support very strongly the negotiation process with
15 respect to draft terms and conditions. It will be the
16 first opportunity that we will have to understand the
17 positions of the people who follow us in evidence and
18 it will certainly assist in terms of focusing our
19 evidence for the assistance of the Board.

20 One aspect of the formal negotiating
21 process that I would like to raise because it does
22 raise a bit of a concern. I would not want it to
23 become a numbers game. For example, just take an
24 example: 9 out of 10 Cabinet ministers may think
25 getting rid of VIA Rail is a good thing, one may not

1 and he may be right or she may be right.

2 At the end of the day, if five out of six
3 believe in a certain position, I don't think any weight
4 from the point of view of the Board should be given to
5 that. That may mean that certain opponents have gotten
6 together or certain proponents have gotten together.
7 At the end of the day it's got to be the merits of the
8 position and not the numbers that count.

9 And I would just be very concerned
10 entering into this process knowing, because although I
11 represent diverse interests and many different entities
12 all under the umbrella of one representation, that I
13 don't want to come out with five against six or four
14 against six as if that had any merit in itself.

15 It's very important at the end of the day
16 if one -- if there is agreement which we all hope to
17 obtain on a particular term and condition, that is one
18 thing; but if five out of six feel that Via Rail should
19 be closed up, that doesn't mean it should, and it's up
20 to the Board in the end to decide the merits of the
21 case.

22 THE CHAIRMAN: And the Board will. The
23 Board understands that perfectly, Mr. Cosman. We are
24 certainly not endeavoring to enter into any kind of
25 numbers game and we will not be giving any particular

1 weight to the number of parties that agree or, for that
2 matter, disagree.

3 What we do feel is the case is that there
4 are areas upon which agreement can be reached and, in
5 fact, can probably be reached outside of the formal
6 hearing process, and we hope that this negotiating
7 session with intensive negotiations within a two-week
8 period will assist that accommodation outside of the
9 hearing process, because to the extent that there can
10 be agreement outside of the hearing process on the some
11 of these issues, it means ultimately in the Board's
12 view that the hearing process overall is shortened and
13 that will, in our view, given the time and expense of
14 public funds involved in this entire process, be in the
15 public interest.

16 Mr. Edwards?

17 MR. EDWARDS: Mr. Chairman, I have a
18 specific and particular concern with respect to the
19 time frame. I have spoken to some of my friends about
20 this and it has to do with the obligation to file draft
21 terms and conditions by January 30th.

22 I am going to be out of the country for
23 most of January and it will be very difficult for us to
24 have that filed by January 30th. I was going to
25 suggest that the particular exception be made to allow

1 us to file ours by February 15th, which would still
2 allow us to participate in the negotiation process.

3 My suggestion is based on the belief, Mr.
4 Chairman, that we should be able to identify our issues
5 relatively specifically. I don't think we have been
6 responsible at all for sending the Board on wild goose
7 chases about what our interests are and I think we
8 should be able to specifically identify those to the
9 satisfaction of the other parties.

10 I did speak to Mr. Freidin about this
11 several weeks ago. When it was raised, he had a
12 concern about several parties asking for this special
13 dispensation, but I think he indicated at that time
14 that he could live with one exception. I hope that
15 still is his position.

16 THE CHAIRMAN: Well, Mr. Edwards, the
17 Board has given some consideration and will take into
18 account your comments today as to the dates and the
19 time frames with respect to the filing of those terms
20 and conditions.

21 It is the Board's view, but we will
22 discuss it further, that the parties in opposition or
23 other parties in support should know basically what
24 their positions are to a large extent at this point in
25 time; the bulk of the Ministry's case is in, the

1 Ministry's draft conditions of approval have been on
2 the table since last June I believe, or July -- sorry,
3 June 26th, and all of their witness statements have in
4 fact been filed, and we are quickly approaching the end
5 of their case.

6 And, as a result, we don't feel that it
7 should be that difficult for other parties to be
8 formulating their terms and conditions with respect to
9 the planning process that is before the Board.

10 But we will take into account your
11 further submissions.

12 Mr. Cosman?

13 MR. COSMAN: Mr. Chairman, I am quite
14 sympathetic to Mr. Edwards' personal situation. I
15 would only raise one point and that is, whatever the
16 time it is, there has to be a period of time between
17 obtaining the draft terms and conditions--

18 THE CHAIRMAN: And you starting your
19 case?

20 MR. COSMAN: --our starting our case but,
21 in addition to that, we would like to meet, with Mr.
22 Edwards draft terms as with everybody else's, with our
23 clients to review them and get instructions as to how
24 we should proceed, and if it's the 15th as compared to
25 another date, then that is the start of the negotiation

1 process, that won't be possible.

2 THE CHAIRMAN: And we have taken that
3 into account, quite frankly, in formulating this date
4 of the 30th.

5 We feel it's important, as we have
6 mentioned before, that all parties in presenting their
7 case focus on the terms and conditions of both the
8 Ministry of Natural Resources and conditions put
9 forward by all parties, and certainly it will assist
10 your presentation of the evidence, Mr. Cosman, when you
11 start, knowing what the positions of the other parties
12 are.

13 And we don't anticipate necessarily that
14 you will be able to start prior to the negotiation
15 sessions, but you may well; and, if you do, you would
16 probably be not much further than your first panel, the
17 witness statement for which is already before us.

18 Mr. Edwards?

19 MR. EDWARDS: Mr. Chairman, if I could
20 just make a couple of further brief comments.

21 Mr. Chairman, this was originally that
22 terms and conditions which were to be filed were to be
23 filed at the conclusion of the Ministry's case. Now we
24 have moved that date up by invoking this process,
25 because it would appear that the Ministry's case is

1 perhaps not going to be completed by January 30th,
2 it's...

3 THE CHAIRMAN: Well, that is true, but by
4 the same token we would suggest to you that the
5 ultimate date upon which the Ministry's case concluded
6 is also further along the road than it otherwise would
7 have been.

8 MR. EDWARDS: Yes, sir.

9 THE CHAIRMAN: You might have had to have
10 your draft conditions of approval in long before now
11 had the Ministry finished long before now.

12 MR. EDWARDS: Yes, I agree with that, Mr.
13 Chairman, but the concern we have is that the last --
14 particularly Panel 16, as seen by my clients, is a very
15 significant one and we feel that in fairness to respond
16 to that we have to hear what the evidence is in that.

17 And it's just that I am -- as I said, I
18 have a personal situation where I am going to be away
19 and it's going to be very difficult for us to file at
20 the same time as other parties. So we are asking for
21 some leeway of some relatively short period of time to
22 allow us to comply with the Board's directives.

23 THE CHAIRMAN: Well, we will take it into
24 account, Mr. Edwards, but we want to be evenhanded in
25 our treatment of all parties and a request for an

1 extension by you may be met with a request for an
2 extension by others as we get closer to the date.

3 That doesn't do much for Mr. Cosman and
4 his clients in terms of reviewing and shortening the
5 presentation of the Industry's case and, consequently,
6 although there may well be some hardship involved, we
7 may nevertheless after consideration stick to that
8 date, but we will advise you in our finalization of
9 these directives.

10 Scoping of Issues. Sorry, Mr. Freidin,
11 do you have something else on that last topic?

12 MR. FREIDIN: Yes. There are two issues.
13 I am not sure whether other counsel will want to
14 address one of them.

15 I notice from the letter from OFAH, and I
16 think I heard from others, that there is some concern
17 about subparagraph III, the last paragraph, that
18 parties will only be permitted to further amend their
19 terms and conditions with leave of the Board.

20 I am not too sure that presents as much
21 of a problem for the proponent as it does for others,
22 in that if the proponent is going to amend its terms
23 and conditions, in all likelihood it would be by
24 adjusting its position and perhaps imposing or
25 suggesting the imposition of further obligations on it,

1 and I don't suppose there would be a terrible amount of
2 objection to that. It might cause more concern for
3 others.

4 And I would like to address in some
5 detail subparagraph IV. But perhaps before I do that,
6 if there are any comments on III...

7 THE CHAIRMAN: Well, the Board has taken
8 the position, subject of course to submissions today,
9 that it wants the terms and conditions put forward in
10 the first instance by January 30th to be the parties'
11 best efforts in terms of their positions as they know
12 them at that time.

13 Subsequent to the negotiating process we
14 realize that some of those suggested conditions will
15 change and will change as a result of the negotiations.
16 We, therefore, want them finalized at that point.

17 We will consider amendment to those
18 conditions on a case-by-case basis, which is the reason
19 for requiring leave of the Board, but we have no
20 intention of having the parties amend their conditions
21 at will so that those amended conditions require
22 further amendments on the part of other parties
23 responding to those changes and on, ad infinitum; we
24 never end.

25 And it is the Board's considered view

1 that the parties should be able to ascertain with
2 reasonable particularity their bottom line positions
3 and those will have been refined as a result of the
4 negotiating process.

5 If there is something that arises in the
6 evidence in terms of the presentation of the other
7 parties' witness panels in cases, then on a
8 case-by-case basis you can seek leave from the Board to
9 further amend your conditions, and if the Board feels
10 it's reasonable under those circumstances, it would
11 grant that leave. That is the reason for that
12 provision.

13 MR. CAMPBELL: Mr. Chairman, on that
14 matter, I think we would support that view, that the
15 leave is a reasonable requirement.

16 We think that the important test in
17 granting leave is just the one that you have mentioned;
18 if a party is able to clearly delineate that in light
19 of certain additional evidence, Items A, B and C, it
20 wishes to amend its proposed term and condition then
21 that, it seems to me, would be the exact circumstance
22 under which leave should be granted.

23 If, on the other hand, it's simply a
24 matter of without any additional evidence wishing to
25 make a change, then I think the Board should take a

1 hard look at that. But I think the evidence -- the
2 impact of additional evidence is definitely the test on
3 which the Board should concentrate.

4 THE CHAIRMAN: And it will be the case
5 because the Board wants of course, in terms of any
6 conditions it might impose, to be able to be in a
7 position to impose a condition that is relevant and
8 addresses the issue effected by that condition. And it
9 may well be that there are certain changes that are
10 necessitated by reason of the evidence as the evidence
11 flows in.

12 But approach this seriously as to what
13 your position is and if it changes as a result of the
14 negotiations, finalize your conditions in final form,
15 then they will be subject only to change upon leave.

16 MS. SWENARCHUK: Mr. Chairman, I have a
17 concern about that proposal, even with the elucidation
18 that has occurred here; and, that is, that precisely a
19 counsel for a party may determine because of new
20 evidence that his or her party's terms and conditions
21 must be amended and the Board may disagree.

22 And in that event, in my submission, the
23 Board has injected itself, in my view not in a
24 justifiable manner, into a party's very determination
25 of its own position before the Board and I, therefore,

1 continue to oppose that qualification on the parties'
2 rights in this order having in mind again, as I said
3 before, I assume that all the parties and counsel here
4 are going to be reasonable and are going to take a very
5 serious approach in these negotiations.

6 However, with respect, I consider it my
7 obligation to put before this Board my client's
8 position and if my client's position changes as a
9 result of new evidence in the case, it is our view that
10 it is our right then clearly to amend our case before
11 the Board and it is not a proper role of the Board to
12 adjudicate as to whether we may change our position.

13 THE CHAIRMAN: Well, we will take into
14 account your submissions.

15 MR. COSMAN: Mr. Chairman, by analogy, in
16 terms of other proceedings, in court proceedings where
17 parties do exchange pleadings and if parties have made
18 admissions in their pleadings, it is only with leave of
19 the court that they may change their position, and I
20 think it's quite reasonable that somewhere in this
21 process that parties be compelled to come forward with
22 their positions and not just tentative beliefs to float
23 until such time as they come out of the wings and put
24 forward their final position.

25 THE CHAIRMAN: And, since you have used

1 the court analogy, at the time when the parties often
2 have to come forward with their positions in a court
3 case is prior to the trial when the pleadings are
4 filed.

5 And, in this case, we are asking the
6 parties to come to their positions well into the case,
7 after the proponent's entire case is on the table and
8 after they have had the advantage effectively of seeing
9 what everyone else's position is; and, furthermore,
10 after they have had the advantage of discussing the
11 various positions in the negotiating process.

12 At that point in time if the parties
13 don't know what their position is, in the Board's
14 respectful view, they may be unlikely to ever know what
15 their position is.

16 Now, that is subject to changes that are
17 necessitated by the evidence as it flows in later, and
18 for that the Board will likely still require leave for
19 amendment, but we will discuss that further and
20 finalize these with our directives when they are
21 finalized.

22 MR. EDWARDS: Mr. Chairman, I support Ms.
23 Swenarchuk's position here. I don't believe this
24 analogy with pleadings in the court system can be taken
25 too far. This is not the case of a motor vehicle

1 accident which happened nine months ago at a specific
2 corner at a specific time and place.

3 I think it could be prejudicial to
4 counsel and to the clients particularly to be, in
5 effect, locked into a position. I mean, if we were
6 all -- this thing was to become too rigid a thing --

7 THE CHAIRMAN: Well, that is on the
8 supposition, Mr. Edwards, that when leave is requested
9 the Board will not grant it.

10 MR. EDWARDS: Well, I guess my concern is
11 that if there is to be a requirement for leave, one
12 that - if I can even take us back to the court
13 analogy - that at the time one was very much locked
14 into one's pleadings in court, I think the general
15 principle in these cases is more of a flexible response
16 and would hope the Board, looking at the nature of this
17 case, would be very flexible in its response to the
18 request for leave to --

19 THE CHAIRMAN: Well, I may be wrong, but
20 I think the Board has been flexible to this point in
21 time and it's unlikely to change its view as the case
22 proceeds.

23 MR. EDWARDS: Well, if the Board were to
24 impose this condition, Mr. Chairman, I think there is a
25 really legitimate concern raised by Ms. Swenarchuk,

1 that the parties with information that they receive
2 over this very lengthy process may decide that they can
3 improve their position in some particular way, and it
4 ought not be an onerous test to be met to be allowed to
5 amend the position, otherwise I think the party may be
6 locked into something it doesn't agree with any longer
7 and that would be unfair.

8 THE CHAIRMAN: Well, we will take into
9 account your concerns.

10 Mr. Freidin?

11 MR. FREIDIN: Yes. I would like to make
12 some comments about the proposed order in relation to
13 subparagraph II sub (iv).

14 The reporter may need a break.

15 THE CHAIRMAN: Yes. Actually, I'm sorry,
16 we had forgotten. You are diligently taking everything
17 down there and we've gone on for so long. We'll take a
18 break for 20 minutes at this point and come back.

19 MR. FREIDIN: Mr. Chairman, I am just
20 wondering for the benefit of the witnesses, I would
21 think -- I want to address that matter, I want to
22 address another matter, I think that they could be
23 excused until four o'clock without any trouble.

24 THE CHAIRMAN: Very well. You shall be
25 excused until four.

1 ---Recess taken at 3:05 p.m.

2 ---On resuming at 3:40 p.m.

3 THE CHAIRMAN: Thank you. Be seated,
4 please.

5 Mr. Freidin?

6 MR. FREIDIN: Yes, Mr. Chairman. I want
7 to address two issues both of which arise out of draft
8 direction (d) sub (iv) which is found on page 4 of your
9 draft direction.

10 My submission relates in part to the
11 comments that I made the other day regarding the form
12 of the Board's order.

13 THE CHAIRMAN: Go ahead.

14 MR. FREIDIN: And not only the form of
15 the Board's order, but also the formal role, if any,
16 that the Environmental Assessment Document should play
17 once the Board's order in fact is made.

18 I'll indicate to you what I believe the
19 order should say and then I'll indicate to you the
20 reasons for my suggestion. I would submit that
21 subparagraph (iv) be changed to read as follows:

22 One --

23 THE CHAIRMAN: Do you want to go slowly,
24 please.

25 MR. FREIDIN: Yes. Some of these

1 comments again don't relate solely to the form but are
2 also designed to facilitate the negotiations.

3 One, draft terms and conditions should,
4 wherever possible, be submitted using the categories of
5 subject matters in MNR's draft terms and conditions
6 which is Exhibit 700.

7 Second, the draft terms and conditions
8 should outline changes in the timber management
9 planning process that are desired, or how certain
10 timber management activities should or should not
11 occur. The terms and conditions must have sufficient
12 particularity so that if imposed it would be clear what
13 must or must not be done.

14 Three, the draft terms and conditions
15 should not seek and, therefore, should not describe
16 amendments to what are described in paragraph (d)(iv)
17 of the draft as the principal documents. And you will
18 notice the principal documents referred to are the
19 Class EA, the Timber Management Planning Manual,
20 Operation manuals, silviculture guides, et cetera.

21 If I might then, my reasons for those
22 suggestions, Mr. Chairman --

23 THE CHAIRMAN: So if I got your last one
24 correct, the draft terms and conditions should not seek
25 and, therefore, not describe amendments to those

1 listed --

2 MR. FREIDIN: To those listed documents.

3 THE CHAIRMAN: Well, why would you not
4 want to suggest amendments to the Timber Management
5 Planning Manual, for example?

6 MR. FREIDIN: If I might, that will
7 become clear. I want to make my submissions -- I can
8 deal with that one first.

9 THE CHAIRMAN: Oh.

10 MR. FREIDIN: All right. But there are
11 different reasons for making that submission, firstly,
12 in relation to the Environmental Assessment Document
13 and in relation to the Timber Management Planning
14 Manual and the other documents referred to there.

15 What I am going to be suggesting is not a
16 departure from term and condition No. 30 wherein the
17 Ministry has indicated that the Timber Management
18 Planning Manual would be amended to reflect the terms
19 and conditions which are imposed by this Board in terms
20 of process.

21 I think if I continue perhaps it will
22 become clear.

23 MRS. KOVEN: How many of these points do
24 you have, Mr. Freidin?

25 MR. FREIDIN: Those are the three, the

1 rest of my submissions are reasons.

2 In relation to the amendment to the
3 Environmental Assessment Document, Mr. Chairman, I
4 think I would like to first off make it quite clear
5 that I am not -- well, first of all, quite clear that
6 there is legislative authority to amend the
7 environmental assessment, that is provided for in
8 Section 12(2)(c) of the Environmental Assessment Act.

9 So I am not submitting as a matter of law
10 that parties cannot seek amendments to the
11 Environmental Assessment Document or that the Board
12 cannot make an order to that effect, rather what I am
13 saying is and what I am submitting is that such action
14 is not advisable in the present case, particularly at
15 this time in the case.

16 I won't repeat the submissions I made the
17 other day about why the Ministry designed the terms and
18 conditions the way it did so that we would have a stand
19 alone document, but I would refer you to those
20 submissions. Unfortunately I do not have the
21 transcript volume and page numbers, but I can provide
22 it to you.

23 It is also the Ministry's submission that
24 the terms and conditions should outline changes in
25 process or practice; and the method of delivering the

1 message to the field regarding what those requirements
2 are and how the field might best go about ensuring that
3 those terms and conditions are complied with should be
4 left to the proponent.

5 MR. MARTEL: Do you want to run that one
6 by me again.

7 MR. FREIDIN: Okay. The term and
8 condition should outline the changes in process or
9 practice desired, but the method by which the Ministry
10 of Natural Resources delivers the message to the field
11 regarding what those requirements are and how best to
12 ensure that those terms and conditions are complied
13 with is something which should be left to the
14 proponent.

15 In essence what I am saying, Mr.
16 Chairman, is that the proponent is going to have the
17 legal obligation to comply with the terms and
18 conditions which are imposed, it's the proponent who is
19 going to suffer the legal consequences of not complying
20 with any terms or conditions that you impose and,
21 therefore, in my submission, the proponent should be
22 free to design how that will best be ensured.

23 THE CHAIRMAN: Well, Mr. Freidin, to take
24 an example, if the term and condition that the Board
25 wishes to impose is that there shall be better public

1 consultation, or there shall be four opportunities or
2 six opportunities for the public to put forward its
3 input into a timber management plan; are you suggesting
4 that it would then be left to the Ministry to design
5 the ways in which that public input would be occurring
6 and the ways in which the public would be notified in
7 terms of when their input would be relevant, and the
8 ways in which that input would be received, whether
9 it's by way of one of the information sessions or some
10 other method, without the Board and, I would suggest,
11 the other parties to this hearing making specific
12 suggestions as to how that should occur?

13 MR. FREIDIN: No, I am not. I think the
14 Board would in fact be making those kinds of
15 suggestions and so would the other parties; in fact,
16 terms and conditions relating to notice we've set out,
17 notices shall contain the following, planning teams
18 shall have the following.

19 If the Board should decide the planning
20 team should have something else on them or somebody
21 also on them, then the Board should so state.

22 THE CHAIRMAN: But how does that get away
23 from the fact that it would be the Board that would be
24 deciding in terms of specific conditions as to how
25 those requirements would be effected or delivered?

1 MR. FREIDIN: Okay. I think that really
2 gets us to the next submission because it is probably
3 perceived, and probably properly so, that the
4 mechanisms which would probably be used by the Ministry
5 to get some of these messages across would be through
6 amendments or changes to some of the documents which
7 the Ministry uses to provide direction to the field,
8 including the Timber Management Planning Manual.

9 So in relation to the kinds of examples
10 that you are suggesting should terms and conditions be
11 provided or be imposed which deal with process, your
12 examples, those matters would as a result of term and
13 condition 30 be incorporated into the Timber Management
14 Planning Manual. So I don't think we have a problem
15 perhaps in relation to those matters dealing with
16 process.

17 But if I could indicate to you why I
18 think there is a problem of someone saying amend the
19 Timber Management Planning Manual by adding the
20 following clause or amend the silviculture guideline by
21 adding the following words to this paragraph, which is
22 really what someone would assume is contemplated by the
23 draft term, that I think is something which would not
24 be helpful either to the negotiation process or perhaps
25 to the ultimate resolution of the issues.

1 And if I might perhaps indicate to you
2 that I take that position because --

3 THE CHAIRMAN: But just a moment. Why
4 wouldn't the Ministry want the input from the other
5 parties as to specifically what they would like to see
6 in terms of, for example, an amendment to the Timber
7 Management Planning Manual, the exact wording, so that
8 the Ministry is clear as to what is desired by the
9 other parties.

10 They may not agree to it and they may
11 have very good reasons for not having agreed to it, but
12 at least having it put forward in terms and conditions
13 specifically would allow the Ministry to know what the
14 other parties' positions are, would allow the Board to
15 know what everybody's position is, and ultimately the
16 Board might include in its decision with respect to a
17 particular issue a specific amendment that it would
18 require to one of those documents to be incorporated
19 pursuant, in effect, to your condition 30 which
20 requires the Ministry to effect those amendments within
21 eight months after the decision.

22 MR. FREIDIN: All right. I make a
23 distinction, Mr. Chairman, and first of all I would
24 expect the negotiation process to in fact include
25 discussion of what they might like to see. What I am

1 saying is that the terms or conditions, if they are
2 going to be stand alone, should be worded in a
3 substantive way.

4 For instance, if somebody wanted to make
5 the submission that the ideal size for clearcuts for
6 the purposes of moose management should be five
7 hectares, it would be my submission that they should in
8 fact have a term or condition which says: When
9 planning the size of the clearcuts in terms of moose
10 management -- ideal moose management, the ideal size of
11 clearcuts should be five hectares; they should not be
12 saying that Timber Management Guidelines for the
13 Provision of Moose Habitat should be amended by
14 changing 130 hectares wherever it appears to five
15 hectares.

16 And the reason I say that is because the
17 Ministry may feel that there is a more appropriate way
18 to get that message to the field, there is a more
19 appropriate way for the Ministry to ensure that it is
20 not exposing itself to prosecution under the
21 Environmental Assessment Act for breach of the Board's
22 order.

23 So if that is the concern, the Board
24 can -- parties can suggest terms and conditions in the
25 form that I have suggested, the Board can impose that

1 as a term or condition, and it is up to the Ministry to
2 ensure that that in fact happens.

3 THE CHAIRMAN: Well, I think at some
4 stage the Board is going to have to receive the
5 assistance of counsel in determining its jurisdiction
6 to amending certain types of documents as a result of
7 its decision.

8 For instance, provincial guidelines such
9 as the tourism guidelines, et cetera, the Board may or
10 may not have any jurisdiction to tamper with any of the
11 wording in those provincially adopted guidelines. That
12 is No. 1.

13 It certainly would have little hesitation
14 presumably in amending the EA Document because there
15 appears to be clear statutory authority for it to do so
16 under the Environmental Assessment Act.

17 MR. FREIDIN: That is one of the reasons
18 why I separated it out.

19 THE CHAIRMAN: Right. And when you get
20 down to some of the other documents, for instance, it
21 may have the jurisdiction to order amendments
22 specifically to the Timber Management Planning Manual
23 because that is a document that is being prepared by
24 the Ministry and it was prepared initially with the
25 understanding that it would likely be amended as a

1 result of this hearing; it's when you get to the other
2 documents specifically that the Board would like some
3 assistance at least from the parties as to what they
4 think the Board could or could not change.

5 MR. FREIDIN: Well, the concern that you
6 have raised is the exact reason that I am making the
7 suggestion that I am, that when I get to the end of my
8 submissions, really where I am going is that if in
9 fact -- well, the issue is this really: What direction
10 should the Board give now which will achieve the
11 purpose of filing terms and conditions at this stage
12 which will not prejudice any of the parties and, at the
13 same time, will leave all the options open at the end
14 of the case to address the concern that you just
15 raised.

16 THE CHAIRMAN: Well, maybe though --
17 maybe that's an issue that should be addressed earlier
18 than the end of the case.

19 MR. FREIDIN: Right, but --

20 THE CHAIRMAN: Prior to the conditions
21 being put on the table.

22 MR. FREIDIN: Right. But my concern is
23 that if you look at the way that IV is worded, people
24 are going to go away and spend time and money and
25 effort coming up with suggestions as to how those

1 documents in the latter category are to be amended when
2 you yourself, Mr. Chairman, have indicated that there
3 is some question as to whether the Board has got the
4 jurisdiction to do that.

5 So what I said to myself is: How can we
6 deal with this, have terms and conditions in a form
7 which will in fact get all the issues on the table and
8 leave it open at the end of the day or perhaps before
9 the end of the day to argue this issue out fully.

10 THE CHAIRMAN: Well, this is why I would
11 suggest that it would probably be better to argue it
12 out ahead of time so that if the conclusion is that the
13 Board has jurisdiction to amend some of these documents
14 within the bounds of its own decision, the parties can
15 address those proposed amendments at the time that they
16 are addressing their minds to conditions of approval.

17 MR. FREIDIN: Well --

18 THE CHAIRMAN: Rather than waiting until
19 the end and then find out that everyone agrees that
20 perhaps the Board has the jurisdiction to amend a
21 particular document but nobody has thought up specific
22 wording or specific amendments. That is the problem.

23 MR. FREIDIN: I accept what you are
24 saying, Mr. Chairman. I would rather just hold back as
25 to when that might be appropriate.

1 THE CHAIRMAN: Okay.

2 MR. FREIDIN: The thought which comes to
3 my mind, however, is that the submissions that might in
4 fact assist the Board in that regard might rely in part
5 on evidence which is yet to come. I don't know.

6 THE CHAIRMAN: Well, the argument would
7 be -- I mean, it's hard for the Board to imagine -
8 because I think what you are alluding to is a legal
9 issue - as to how things would change relative to the
10 Board's jurisdiction to do what you've alluded to or
11 not in terms of evidence.

12 In other words, if you argued at the end
13 of the case in terms of a legal argument, why would
14 that necessarily be different from what you would argue
15 now?

16 MR. FREIDIN: I don't think what I am
17 suggesting would change the evidence that the Board
18 would hear.

19 THE CHAIRMAN: But it will change the
20 form of the conditions coming in, that is the point.

21 MR. FREIDIN: That's right. But if in
22 fact the form of the terms and conditions -- the form
23 in which they come in achieves the purpose of focusing
24 the issues; that is No. 1, it's got to do that, and I
25 submit that it can do that by putting it in in the

1 fashion that I have indicated, a stand alone document
2 which does not refer to amendment of guidelines.

3 And the second thing I think we want to
4 do is we want to make sure that the terms and
5 conditions come in in a form which will leave open the
6 option of making this argument as to proper form later,
7 and I will make some submissions in a moment that if
8 they don't, if they come in in the form that is
9 contemplated by IV, it may in fact not achieve either
10 of those two purposes. And I will address that in a
11 minute.

12 But just going back as to why we are
13 saying the direction should not indicate that these
14 documents should be amended or make suggestions as to
15 how they should be amended, it's been stated clearly
16 before that the Ministry is not seeking approval of
17 those documents; the main reason outlined earlier was
18 that there is a need for flexibility to improve those
19 documents based on experience gained in their
20 application.

21 THE CHAIRMAN: Yes. But doesn't that
22 argument hold more water, Mr. Freidin, in terms of
23 future amendments as opposed to amending those
24 documents, if they can be amended by this Board as a
25 result of the evidence adduced at this hearing.

1 Once the Board's decision issues there
2 may be flexibility required with respect to further
3 amending those documents and you may set up, as we
4 alluded to this morning, some kind of amendment
5 procedure; but to retain ultimate flexibility, if the
6 Board in fact has jurisdiction to particularize some of
7 the concerns by amending the documents at this time
8 including the Timber Management Planning Manual, would,
9 I think in the Board's view, obviate some of the
10 benefits that could emanate from this hearing.

11 I mean everyone is spending a lot of time
12 looking at a lot of issues closely and there is little
13 doubt that parties will want to suggest certain
14 amendments, and there is also little doubt in the
15 Board's view that some parties will not want to leave
16 it totally to the discretion of the Ministry to
17 formulate the wordings for any such amendments which
18 will then, in effect, constitute the direction to the
19 field to carry out those activities in accordance with
20 those amendments.

21 And that is why it becomes, I think to
22 the Board, an important issue as to whether or not we
23 can render our decision in a form that will have the
24 effect of amending certain documents; and, if not all
25 documents, which documents or which types of documents.

1 MRS. KOVEN: I agree with the Chairman,
2 Mr. Freidin. It sounds at this point as though you are
3 requesting that the Ministry have complete control over
4 the way in which suggested amendments or in the very
5 way that the terms and conditions are submitted by the
6 parties; and, then furthermore, the parties are told to
7 keep away from the work that goes on in the field, they
8 are to concern themselves with the general policy
9 documents and those sorts of things and not to really
10 mess around with what seems to be happening in the
11 field.

12 MR. FREIDIN: I don't think I can quite
13 agree with that. What I am saying to the parties is,
14 if you have got a concern about what is going on in the
15 field, because we are asking for approval of the timber
16 management activities, if you have got a concern about
17 that, you submit a term or condition which is very
18 clear and if imposed will tell the proponent what it is
19 that it can or cannot do in the field, because that is
20 what we are talking about, operations in the field and
21 the potential environmental effects of those
22 activities.

23 MRS. KOVEN: Isn't your job right now,
24 Mr. Freidin, though to listen to what the parties have
25 to say to you in terms of what their proposed terms and

1 conditions will be?

2 MR. FREIDIN: Yes, but if they submit
3 their terms and conditions in the form of amendments to
4 those documents, I have some concern as to whether, in
5 the event that this Board should decide that it does
6 not have the jurisdiction to order amendments to those
7 documents, whether terms or conditions which have been
8 formulated in that form, amendments -- proposed
9 amendments to those documents, will have properly
10 focused the discussion so that it will be of assistance
11 to the Board at the end of the day in imposing terms
12 and conditions that it finds that it does have the
13 jurisdiction to impose.

14 I don't think there is any question that
15 this Board has the jurisdiction, and even aside from
16 the jurisdiction, I think it's more appropriate to
17 impose terms or conditions as to what should or should
18 not happen in the field, on the ground. No question
19 about that.

20 Now, if at the end of the day -- and if
21 the terms and conditions are put in that form, the
22 issues will be crystal clear as to what it is they
23 want.

24 Now, if at the end of the day somebody
25 decides that they want to argue that not only should

1 the Board tell the proponent what it is that should or
2 should not happen on the ground, but also the means by
3 which it provides direction to the field to ensure that
4 it happens, I would think that it would be, and perhaps
5 a simple matter, to take the term and condition
6 standing by itself, a term and condition of substance,
7 and turn that into a term or condition which provides
8 direction or tells the Ministry how it should go about
9 giving direction to the field. I am not too sure
10 whether it would be quite as easy to turn it the other
11 way around.

12 MRS. KOVEN: The way I see it, it would
13 be much easier, looking at your example of a clearcut
14 size, if a party were to say: We think clearcuts
15 shouldn't exceed five hectares in size or whatever
16 number you have used, I think that focuses their
17 thinking more clearly than saying: We think clearcuts
18 should be smaller.

19 I mean at the end of the day if they had
20 to go back and say: We are in favour of small
21 clearcuts instead of specifying a size, that is a much
22 easier exercise than doing a specific --

23 MR. FREIDIN: Well, again, the concern I
24 would have about that, using that example again, is if
25 someone says to the proponent that clearcuts should not

1 be greater than five hectares that is the ideal size
2 for moose management, that is different. If someone
3 came along and said: Change it to read this. Now, of
4 course, we would have to get into a discussion about
5 saying right now: As well with your term and condition
6 you better submit all the reasons that you want that.

7 I just think it gets -- and I think the
8 documentation which it would be encumbent upon people
9 to submit in support -- I mean, the term and condition,
10 there shouldn't be any guessing when the Ministry picks
11 up the terms and conditions as to what it is they want.
12 And so, I mean, if they want to change that figure,
13 then my question would be: Well, why do they want to
14 do that.

15 And I am saying, if we are talking about
16 matters of substance the real issue is, good moose
17 management should have clearcuts of five hectares and
18 no other. That is the issue, that is what they want
19 the result to be on the ground. Whether that is
20 achieved through an amendment to the guideline or not
21 is really not the issue. I can see how people may
22 think: Well, that will help focus it, but that is not,
23 in my respectful submission --

24 THE CHAIRMAN: But are not the guidelines
25 the manner in which that condition is delivered to the

1 field? Are you not putting forward as part of your
2 case the idea that there are certain guiding principles
3 contained in certain documents, one of them is the
4 Timber Management Planning Manual, the other documents
5 are things like guidelines and provincial policies, et
6 cetera.

7 And if you don't find it within those
8 guiding documents, how is anyone going to be assured
9 that the message will in fact get to the field, short
10 of arriving at that conclusion after it's too late; in
11 other words, there's a problem and it's not found
12 anywhere in the guiding documents and yet it occurred
13 and maybe there's a breach of the Board's decision, but
14 so what?

15 MR. FREIDIN: Mr. Chairman, you made a
16 comment to Mr. Axford and I think I made a comment
17 while I was sitting here, and you said there was
18 certain incentive for people to do certain things. And
19 the incentive for the Ministry of Natural Resources or
20 any proponent that appears before you to do in
21 substance what in fact the Board believes is necessary
22 to do, the incentive for doing that is the consequences
23 of not doing that.

24 THE CHAIRMAN: But don't you think, Mr.
25 Freidin, after the point we have reached in the hearing

1 thus far, that many members of the public and many of
2 the parties in opposition want something that I would
3 suggest is a little bit more, they not only want the
4 assurance that the Ministry will do what's appropriate
5 but they also want to know how the Ministry is going to
6 arrive at that position; they want to know that the
7 reason they can derive some confidence that the
8 Ministry in fact will do something is because it sets
9 out in some guiding policy type document that they will
10 do it in such and such a way.

11 MR. FREIDIN: And in relation to
12 process-related matters they will all be in the Timber
13 Management Planning Manual as a result of term and
14 condition No. 30; in relation to the other terms and
15 conditions, they will in fact stand alone as terms and
16 conditions attached to any order that the Board makes
17 and the direction to the field; well, I guess will
18 occur in a manner that the Ministry feels will ensure
19 that those terms and conditions are complied with.

20 My example perhaps of five hectares was
21 not a good one if we're talking about process
22 particularly, but if the Board imposes a term about
23 notice, about who is on planning teams, about time
24 periods and all those sorts of things, those are all
25 going to be in fact incorporated into the Timber

1 Management Planning Manual.

2 THE CHAIRMAN: Well, okay. Continue on
3 with your argument and let's --

4 MS. SWENARCHUK: Mr. Chairman?

5 THE CHAIRMAN: Yes.

6 MS. SWENARCHUK: I don't wish to
7 interrupt my friend, but I find this discussion to be
8 of such substantial importance to all of us that I am
9 frankly completely shocked by the suggestion.

10 As I read it from the Ministry, that we
11 are now locked into a negotiation position, we are now
12 locked into providing terms and conditions in advance -
13 with which I don't argue - we are now going to be told
14 by the proponent the extent to which our case and our
15 terms and conditions can qualify the proponent's case
16 as it has been presented, as if we are all assuming
17 that that case and that approach to timber management
18 is going to be the basis of the Board's order.

19 Some of us might suggest that the Timber
20 Management Planning Manual or any of the provincial
21 guidelines be completely abolished, never mind amended,
22 and surely we are capable of writing terms and
23 conditions which indicate clearly what our position is.

24 The extent to which the Ministry
25 considers that there will be a particular type of

1 document at the end of this hearing is totally up for
2 grabs as far as the rest of us are concerned, and I
3 find this kind of discussion the sort of thing that
4 makes us wonder what we are doing in this hearing.

5 THE CHAIRMAN: Well frankly, Mr. Freidin,
6 the Board - and this is the opinion of all three Board
7 members - finds a great deal of merit in Ms.
8 Swenarchuk's latest submission.

9 We are focusing the discussions for this
10 part of the case on the Ministry's application that it
11 put before us and the suggested terms and conditions
12 put forward by the Ministry. We have yet to hear the
13 other sides of the case, there are panels before us
14 that may suggest a substantially different approach and
15 they may suggest conditions which in fact embellish or
16 amend your suggested conditions but may suggest other
17 conditions which have totally different implications.

18 And the purpose of the negotiating
19 session is to reach agreement where agreement can be
20 reached, but there is little doubt in the Board's mind,
21 frankly, that agreement will not be reached on
22 everything and, in fact, there will be legitimate areas
23 of dispute both in terms of process matters and in
24 terms of particular types of practices and conditions
25 that the Board will be called upon at the end of the

1 case to adjudicate upon, and that is our role.

2 And there is no assurance that any
3 position is cast in stone certainly at this stage, nor
4 is there any assurance that the Ministry's application
5 will even be approved. Everything, as Ms. Swenarchuk
6 says, is legitimately under the legislation up for
7 grabs.

8 MR. FREIDIN: All right. I understand
9 you, I don't really want to repeat my submissions. The
10 purpose of my making the submissions that I made was
11 not to forestall any arguments regarding the form, it
12 was because of the concern over the two reasons I have
13 already indicated and --

14 THE CHAIRMAN: Now, just before you leave
15 that, do any of the other parties to the proceedings
16 have any difficulty with the wording of sub IV on page
17 4 as it is worded in terms of understanding what might
18 be contemplated that the phrase 'terms and conditions'
19 might include?

20 MS. SWENARCHUK: Mr. Chairman, my
21 understanding of that paragraph suggests that it shall
22 encompass proposed amendments but it might encompass
23 totally different type proposals.

24 THE CHAIRMAN: That's right, but what it
25 may also include are suggested amendments to this type

1 of documentation which we understand is the principal
2 documents which will be affected by the Board's
3 decision.

4 MR. COSMAN: Mr. Chairman, I think I
5 understand it. I think it's clear when it indicates
6 that, in effect, uses the very language that you
7 suggested, that it includes 'without limiting the
8 generality'.

9 THE CHAIRMAN: That's right. There may
10 be other documents that it may affect as well, but we
11 are listing the principal ones that we could think of
12 that have been brought forward as the principal
13 documents. There may be some others.

14 MR. COSMAN: And the only point, Mr.
15 Chairman, that I would add is I can understand Mr.
16 Freidin struggling with the jurisdictional issue, we
17 are all going to have to face and make submissions on,
18 but I would not want to be in a position where I
19 couldn't suggest a specific language change, subject to
20 the jurisdictional issue, to the Timber Management
21 Planning Manual. And Mr. Freidin might say: Mr.
22 Cosman, you are all wet, that's --

23 THE CHAIRMAN: Or we can't carry it out
24 practically or any other reasons.

25 MR. COSMAN: But if I chose to do it, I

1 don't know why it wouldn't be helpful to Mr. Freidin to
2 understand what it is that I am suggesting.

3 MR. FREIDIN: Okay.

4 MR. CAMPBELL: We are going to make
5 submissions on this, Mr. Chairman. If the Board is
6 saying that it has no need to hear from other counsel
7 on this matter of submissions, then that is fine, I'll
8 stay sitting down as one does in court when the judge
9 says: We don't need to hear from you, Mr. Campbell;
10 but if the Board is going to give any thought
11 whatsoever to this view that has been put forward by
12 the Ministry, then I definitely have submissions to
13 make.

14 THE CHAIRMAN: I think, as you have put
15 it, we won't require your submissions. If by what you
16 mean with your last comment is that we are going to
17 give any serious consideration to Mr. Freidin's last
18 proposal, the answer to that I think is no, we are not.

19 MR. FREIDIN: Okay.

20 THE CHAIRMAN: And, therefore, I suppose
21 we don't have to hear from you. Is that correct, Mr.
22 Campbell?

23 MR. CAMPBELL: That's correct, except as
24 you might want some elucidation and enormal fascination
25 with my submissions that I will impart.

1 THE CHAIRMAN: We are going to pass that
2 up as well at this time.

3 MR. MARTEL: With difficulty we pass.

4 MR. CAMPBELL: I know it's a great
5 temptation to you, Mr. Martel.

6 THE CHAIRMAN: But I would like counsel I
7 think to really give some serious consideration as to
8 when we might appropriately deal with the
9 jurisdictional issue because I think it is an issue of
10 some importance. Personally I don't feel it should be
11 left to the end of the case because I don't think, on
12 the legal matter, much is going to change and it may
13 materially assist the parties in formulating their
14 conditions.

15 MR. CAMPBELL: Well, I would recommend,
16 Mr. Chairman, that that be done as soon as possible. I
17 don't think this is a big issue at all and given the
18 way this legislation has been consistently interpreted,
19 I don't think there is much to argue about here.

20 But if it is seriously being raised that
21 there is a question in this area, then let's get it
22 settled now, otherwise we have been wasting one heck of
23 a lot of time. From day one in this case we have been
24 focusing our attention on some very specific items and
25 we are going to continue to do that.

1 THE CHAIRMAN: Well, you may be right in
2 what you say, Mr. Campbell, but the Board would like
3 the assistance of parties, particularly when we are
4 dealing with things like the provincial guidelines, and
5 we would like to hear the views of counsel as to what
6 our jurisdiction might be, for instance, to formulate a
7 term and condition that would have the effect of
8 overriding, for example, a provision in one of the
9 provincial guidelines.

10 And I am not sure that that is as clear
11 as some of the other powers of the Board to impose
12 terms and conditions of a general sense are. It may
13 well be that there is no problem with that either, but
14 perhaps we would benefit from your submissions.

15 MR. FREIDIN: And, Mr. Chairman, I think
16 that the submissions and the concern is not necessarily
17 a jurisdictional one or only a jurisdictional one, it
18 is a submission as to the appropriateness of it.

19 The concern that the proponent has is
20 retaining that flexibility to in fact change those
21 documents to reflect the experience in the field, to in
22 fact improve those documents as a result of
23 technological change.

24 THE CHAIRMAN: But that may be able to be
25 built in in terms of an amending process post-decision?

1 MR. FREIDIN: All right.

2 THE CHAIRMAN: I mean, you know, we can
3 understand your concerns in that area, but what we are
4 are interested in and what we think the parties, with
5 the exception of perhaps yourself Mr. Freidin, have
6 always thought is, we'll come out of this hearing with
7 the precise terms and conditions to be imposed by this
8 Board reflected in whatever documentation is used to
9 implement this decision. And if it is a planning
10 manual, then it would be so amended; and then you would
11 go from there if further changes were required.

12 MR. FREIDIN: And it may very well be
13 upon reflection that with the appropriate wording of
14 the Board order regarding flexibility after any such
15 order, that might in fact address the major concern of
16 my clients.

17 THE CHAIRMAN: All right. The Board will
18 give consideration I think to setting a time to hear
19 submissions on this jurisdictional issue at some point,
20 but we won't do it right at the moment.

21 MR. FREIDIN: But I hope the remarks that
22 we've just had do not detract from my first submission;
23 and, that is, that the draft terms and conditions
24 should, wherever possible, be submitted using the
25 categories of subject matters in MNR's draft terms and

1 conditions for all the reasons I have indicated
2 earlier.

3 THE CHAIRMAN: Well, we think that would
4 be helpful to the extent that the parties can do it.
5 The parties may have different concerns they want to
6 raise which don't fit neatly into those categories and,
7 to that extent, they may not follow the format.

8 But we would like the conditions from all
9 parties submitted in a manner which will assist all
10 parties and the Board of contrasting and comparing the
11 various positions, and if you can do it under subject
12 headings, all the better.

13 MR. FREIDIN: Those are my only
14 submissions on that, Mr. Chairman. Sorry to have taken
15 so long. I have no other comments in relation to Part
16 II.

17 THE CHAIRMAN: Okay. Now, the next
18 heading is scoping of issues. Do any of the parties
19 have any problem with the scoping of issues directions?

20 Ms. Swenarchuk?

21 MS. SWENARCHUK: Mr. Chairman, my
22 concerns relate once again to the Board's proposal for
23 lead counsel in paragraph (d) at the bottom of page 4,
24 and --

25 THE CHAIRMAN: Excuse me one moment. The

1 Board is just noting the time. There doesn't appear to
2 be much sense in keeping the panel remaining because I
3 don't think that we are going to get to -- we were
4 about to dismiss you, so you can consider yourself
5 dismissed. We will adjourn after we finish with these
6 comments.

7 --- (panel withdraws)

8 THE CHAIRMAN: Sorry. Go ahead, Ms.
9 Swenarchuk.

10 MS. SWENARCHUK: Well, looking at the
11 paragraph at the bottom of the page that has to do with
12 the possible designation of lead counsel --

13 THE CHAIRMAN: Note the word 'possible'.

14 MS. SWENARCHUK: That is my word, I don't
15 think it was your word.

16 THE CHAIRMAN: Well then, try the word
17 'may'.

18 MS. SWENARCHUK: I am sorry, that doesn't
19 give me sufficient encouragement.

20 I might add, before I go on, that I have
21 discussed this question at some length with both Mr.
22 Edwards and Mr. Hunter, and Mr. Hunter specifically
23 wishes to convey to you that he objects strongly to any
24 attempt to appoint counsel to cross-examine, other than
25 himself, on any issue of concern to his client, and Mr.

1 Edwards essentially repeats the same sentiment.

2 Now, first of all, perhaps some
3 clarification of the orientation of the order. You
4 have indicated that this might occur in order to
5 prevent undue repetition, and at least the three of us
6 are of the firm opinion that we have not contributed in
7 any way to any unundue repetition in cross-examination.
8 We don't know what exactly the Board has in mind with
9 respect to that, and I perhaps won't ask you to clarify
10 it, but it is our view that the parties overall have
11 not been unduly repetitive in cross-examination, and
12 that where issues have come up, the same issue has been
13 raised by more than one party, it is almost always in
14 consequence of parties having different positions with
15 regard to those issues or different questions.

16 I must state that I am not personally in
17 a position to cross-examine so as to represent any
18 party's interest other than my client's interest at the
19 Board and I am instructed to oppose any attempts to
20 limit the presentation of my client's case by its own
21 counsel and any sort of delegation of its rights to
22 representation by any other counsel.

23 Now, the paragraph refers to Section
24 18(15) of the Environmental Assessment Act which, in my
25 submission, is not, with respect, applicable to the

1 question of appointment of lead counsel. As I read
2 Section 18(15) it would suggest to me that perhaps at
3 the beginning of -- what is complicated is that perhaps
4 at the beginning of a hearing such as this, if numerous
5 individuals had come to the Board representing
6 essentially identical interests, all wishing to
7 participate or cross-examine or whatever, the Board
8 then would have the jurisdiction to indicate that one
9 individual or perhaps group should represent that
10 class.

11 But, in my view, that provision in the
12 legislation, which we certainly would support, is not
13 applicable to the situation we have in front of us in
14 which all parties now formally designated as parties in
15 front of this Board do not, in our view, constitute a
16 class at all. If any party does, I would suggest it is
17 my client which represents -- in which five
18 environmental groups with naturalists and forestry
19 experience came together themselves as one party before
20 you.

21 THE CHAIRMAN: Can you not read that, Ms.
22 Swenarchuk, with the words a little further down:

23 "...having in the opinion of the Board a
24 common interest."

25 MS. SWENARCHUK: That provision also

1 causes me some concern, Mr. Chairman. Although all of
2 us as intervenors do confer frequently, as I think has
3 become more clear to the Board at least in this panel,
4 in fact all of us are quite clear that we represent
5 clients who have, to some extent, differing interests.
6 That is certainly my client's position and I think it's
7 very clearly the position of at least Mr. Hunter and
8 Mr. Edwards as well.

9 THE CHAIRMAN: Well, but do not in some
10 respects - I don't think the Board is quarreling with
11 the fact that you perhaps represent different
12 interests - but do not in some respects your interests
13 overlap? Are you not, for instance, interested,
14 through the participation of some of the groups that
15 you represent, interested in conservation issues much
16 like the Anglers & Hunters might be interested to some
17 extent in conservation issues and some of those issues
18 may in fact be a similar concern?

19 MS. SWENARCHUK: I think you, in your
20 wording, identified exactly the problem that I'm
21 concerned about. Yes, we may as the Anglers & Hunters
22 be concerned with conservation issues; we will not,
23 however, in most cases have exactly the same concerns
24 or exactly the same proposals with regards to those
25 conservation issues as, for example, the Anglers &

1 Hunters.

2 In fact, as most people in this room will
3 be aware, there are considerable serious differences in
4 approaches to, for example, wildlife management between
5 our clients and the Anglers & Hunters. So the mere
6 fact that various parties are interested in some way in
7 a particular issue, in our view, certainly does not
8 mean that the interests are the same, the proposals are
9 the same, or that they constitute a class of
10 individuals with similar interests.

11 THE CHAIRMAN: No, but we are alluding
12 perhaps, Ms. Swenarchuk, to the isolated cases where
13 that in fact might be the case; in other words, surely
14 it is not beyond the realm of possibility that you
15 would have a view on a particular issue from the
16 perspective of your clients that might in fact coincide
17 with a view, for example, of the Anglers & Hunters or
18 NOTOA on the same issue--

19 MS. SWENARCHUK: That's correct, Mr.
20 Chairman.

21 THE CHAIRMAN: --from the same
22 perspective and even be prepared to agree upon the same
23 proposal which may be in contrast to the Ministry's
24 position and, therefore, when we are hearing what that
25 proposal is, it might help if we heard it from one of

1 the parties representing the other two groups than all
2 three.

3 MS. SWENARCHUK: What I would suggest
4 though --

5 THE CHAIRMAN: Okay. Mr. Martel is
6 bringing up a possible example, and let's just throw it
7 out on the table to illustrate the type of thing that
8 we might --

9 MS. SWENARCHUK: I won't deny that there
10 are possible examples, Mr. Chairman. If I could just
11 reply to exactly the principle that you stated, it is
12 that --

13 THE CHAIRMAN: Just one second, we will
14 get to your position in a minute.

15 Term and condition No. 1 put forward by
16 the Ministry, there was a position put forward by
17 several of the parties that their specific interest
18 should be represented on the planning team. Why can't
19 they, if it's the Tourist Outfitters Association or
20 whether it's some of the native groups or any of the
21 other parties, have one of their representatives as a
22 formal member of the planning team as opposed to just
23 being called in as a possible advisor.

24 Now, that was canvassed by most of the
25 parties in terms of their cross-examinations on that

1 particular condition of approval, suggested condition.
2 Now, why couldn't that position have been put forward,
3 for instance, by one party on behalf of several of the
4 groups, as an example, just trying to...

5 MS. SWENARCHUK: Well, perhaps it could
6 have been, Mr. Chairman. But the difficulty in our
7 view with the Board determining that an individual will
8 represent various intervenors on any particular issue
9 is that you are not in the position, in advance of
10 hearing from all of us, to know the degree to which
11 there is agreement on various proposals, in fact
12 probably you are not in any position until the
13 cross-examination, or let's recall the cases that we
14 are to present, to know --

15 THE CHAIRMAN: What about the parties
16 reaching that position on their own?

17 MS. SWENARCHUK: To some extent that is
18 being done, Mr. Chairman. I think you are seeing
19 evidence of that and where it's not being done, it is
20 perhaps because there are significant differences
21 between the parties' positions.

22 But we have very serious concern about
23 the Board taking upon itself the role of determining in
24 advance where parties should have common positions on
25 anything. I fail in practicality to see how you could

1 fairly appoint lead counsel on these issues. Without
2 going through in advance what everyone's position is,
3 really the process itself --

4 THE CHAIRMAN: What if the Board
5 entertained in advance, going back to the example just
6 used, it came to the conclusion that a number of the
7 parties are likely to put forward the position that:
8 Why shouldn't they have individual representation on
9 the planning teams, and what if the Board at that point
10 said: Now look, parties, we think this is an issue
11 that is probably going to be addressed by several
12 parties, you are going to make essentially the same
13 arguments.

14 MS. SWENARCHUK: Well, that is where I
15 would disagree, Mr. Chairman. The parties cannot make
16 the same arguments because being as different as the
17 parties are each one is going to have a different
18 reason to justify its possible inclusion in the
19 planning team.

20 And I think that that level of detail,
21 that level of knowledge of the rationale for any
22 particular position is exactly what the Board is not in
23 a position to know.

24 And I have a further concern with regards
25 to the whole question of solicitor/client

1 confidentiality. If a presumption is to be made that
2 any counsel here somehow can be lead counsel and take
3 instructions from more than one client, as I say, I do
4 not consider myself in a position to do that; I
5 certainly cannot support any measure which would
6 require my client to cease in its solicitor/client
7 relationship with me and transfer at least parts of
8 that relationship to another solicitor.

9 I think in short that the implications of
10 that kind of compulsion are in fact very broad and
11 quite contrary to all the normal means of process
12 before a tribunal.

13 THE CHAIRMAN: Well, okay. It gets down
14 essentially to the issue of whether or not in the
15 Board's view it feels the arguments being put before it
16 are repetitious. If it feels they are repetitious, if
17 it feels they are not sufficiently different in terms
18 of particularizing the reasons for putting forward
19 similar arguments, even though they may be
20 characterized as different vis-a-vis the party that is
21 putting them forward individually, then the Board is
22 faced with the decision at any given point in time in
23 the evidence to say: It's heard this before, tell us
24 why your position is different from what we have
25 already heard.

1 MS. SWENARCHUK: And I think that is
2 exactly the proper way to proceed. I am at some
3 disadvantage in this discussion because we normally go
4 first in cross-examination and no one has yet told me
5 that I am repeating what anybody else has done because
6 I am the first up; however, I am very concerned about
7 any kind of measure like this that would essentially
8 remove from my clients its right to instruct me or Mr.
9 Lindgren to represent it before this Board in
10 cross-examination as we decide.

11 THE CHAIRMAN: Well, it may be that the
12 Board will give further reconsideration to that and it
13 may be that we can accomplish the same end by being
14 ever vigilant on what we consider to be arguments
15 advanced or submissions advanced that we have in fact,
16 in our view, heard before and may be calling upon
17 counsel to tell us either why is your argument
18 different, present something new, or move on to the
19 next issue.

20 MS. SWENARCHUK: That is entirely proper
21 and I would just underline, once again, that I am also
22 again speaking for Mr. Hunter and Mr. Edwards in this.

23 THE CHAIRMAN: All right. We will
24 certainly take those submissions into account.

25 Anything further on the scoping of issues

1 part?

2 (no response)

3 I take it nobody has any concerns with
4 respect to ensuring that parties participate with their
5 statements of issue, failing which they may be
6 foreclosed from addressing the Board on those issues?

7 (no response)

8 The Board's doesn't seem to have any
9 problem with those at all.

10 Mr. Campbell?

11 MR. CAMPBELL: I just wanted to speak for
12 a moment to Item (c) and (d). On Item (c), I thought
13 it might be useful simply to add the words 'or being
14 cross-examined'. That is, parties wishing to
15 cross-examine, that cross-examination may relate to
16 draft terms and conditions by MNR, draft terms and
17 conditions by the party cross-examining or draft terms
18 and conditions of the party being cross-examined.

19 With respect to subparagraph (d) I think
20 I would only add to what has been said already by
21 saying that the Board should be cognizant that parties
22 may be cross-examining on a similar topic but for
23 entirely different purposes.

24 Mr. Freidin referred to this earlier, Ms.
25 Swenarchuk raised perhaps a slightly different concern,

1 but it also touches on this matter, and I think the
2 Board does have to bear in mind that cross-examinations
3 in the same area can be for entirely different
4 purposes, either to gain admissions, to gain support,
5 et cetera, et cetera.

6 THE CHAIRMAN: We realize that. I think
7 really the way that the Board will probably ultimately
8 handle it is, if we perceive we are not hearing
9 anything new on a particular issue from a particular
10 party, we will ask them to tell us what is different
11 from what we have already heard or move on.

12 MR. CAMPBELL: I think that is entirely
13 appropriate, Mr. Chairman, and it is always open to the
14 Board to prevent repetitive cross-examination.

15 THE CHAIRMAN: Okay. If we have no
16 further questions on that, we will move on to the last
17 issue, submission of the additional plan by the
18 Ministry.

19 MS. SWENARCHUK: Can I just clarify one
20 issue on this before --

21 THE CHAIRMAN: Yes.

22 MS. SWENARCHUK: It's the only question I
23 have; and, that is, I see a contradiction between -- or
24 a possible contradiction between the fifth paragraph
25 and the last on that page.

1 THE CHAIRMAN: Is this on page 5?

2 MS. SWENARCHUK: And the question in my
3 mind is, is the Board directing the Ministry to produce
4 another plan, or is the Board directing the Ministry as
5 to what should be produced if the Ministry determines
6 at this point --

7 THE CHAIRMAN: The latter.

8 MS. SWENARCHUK: Okay.

9 THE CHAIRMAN: That is what we meant to
10 say.

11 MS. SWENARCHUK: So then perhaps it's
12 just a question of the wording in the last sentence of
13 the fifth paragraph.

14 MR. FREIDIN: It's going to become
15 redunant because I am going to indicate to you that the
16 Ministry has decided that they are not going to file
17 another plan, and I'll give you the reasons. So I
18 don't know whether we have to spend a lot of time on
19 what that particular paragraph indicates.

20 Mr. Chairman, the issue, as you know,
21 arose during submissions made during the discussion of
22 the Red Lake Plan and the concern which was raised was
23 one regarding documentation of the application of the
24 area of concern planning process accompanying that
25 plan.

1 Some submissions were also made during
2 the discussion of that issue which questioned the merit
3 of the prescriptions imposed or, putting it in other
4 words, the ability of the Ministry in fact to make
5 adequate decisions regarding environmental protection.
6 That is going to be a matter of argument at the end of
7 the case, but at this stage I simply repeat what I said
8 earlier; and, that is, that the Ministry does not
9 accept that proposition.

10 So the question is: How is the Ministry
11 going to address the concern which was raised by the
12 Board regarding the documentation. It is obviously a
13 concern of the Ministry of Natural Resources that the
14 documentation produced be adequate and MNR has decided
15 that the manner it will address this matter is not
16 through the submission of another plan.

17 The reasons for that are as follows.
18 Although there have been some changes in documentation
19 being prepared in plans, that documentation is not at
20 this stage where MNR is completely satisfied and,
21 therefore, to submit another plan would not dispense
22 with the need to improve documentation.

23 The Ministry believes that it can address
24 this concern through other means, and I will explain
25 what those means are in a moment, and that the proposed

1 method in the Ministry's view will firstly eliminate
2 the need to spend hearing time involved in scoping
3 issues in relation to a plan or hearing evidence or
4 particularly cross-examination in relation to that
5 plan. It will also save preparation time for other
6 parties and the Board.

7 Now, as to what MNR is going to do, I'll
8 speak firstly in a general way and then perhaps provide
9 you with some more specifics.

10 In a general way what MNR believes is
11 required and, therefore, what it has decided to do, is
12 to develop a mechanism through which improved direction
13 can and will be given to the field regarding area of
14 concern documentation. Such an approach is consistent
15 with the Ministry's position stated earlier, that the
16 decisions are all right, it is the documentation of the
17 thought processes which are not at the desired level.

18 The Ministry is going to respond to this
19 concern by firstly preparing a new draft term and
20 condition which will describe action which MNR will
21 take which, in its view, will increase to an acceptable
22 level the probability of the desired documentation
23 being produced. That term and condition will include
24 reference to a standardized provincial form for such
25 documentation, and additional distribution to the field

1 regarding its completion in accordance with term and
2 condition No. 30. That particular term and condition
3 would be one in relation to process, therefore, would
4 be incorporated into the Timber Management Planning
5 Manual. And the Ministry proposes to file this draft
6 term and condition by December the 15th, 1989.

7 Mr. Chairman, you indicated that a plan,
8 if we proposed to submit that, would be November the
9 30th; what we are proposing to submit is not as
10 lengthy, the time period for review should not be as
11 lengthy. Mr. Bisschop is going to be a witness in
12 Panel No. 17 and he will be available at that time, not
13 with -- well, he will be available at that time to in
14 fact answer questions in relation to that draft term
15 and condition.

16 Thank you.

17 THE CHAIRMAN: Very well. Well, the
18 Board has always maintained that it is up to the
19 Ministry to present the evidence they feel the Board
20 should have before it with which to render its decision
21 upon, and if the Ministry has chosen not to produce
22 another plan, that is their decision.

23 The Board will not order them to produce
24 any particular evidence, and the Board feels it has
25 indicated its concerns over the possible insufficiency

1 of the documentation concerning the area of concern
2 planning process and the Ministry has chosen to address
3 it in this fashion and, therefore, we shall await your
4 further submission, Mr. Freidin. And if the Board has
5 concerns with that, we will probably indicate them at
6 that time; and, of course, the other parties will be
7 allowed a full opportunity to cross-examine on this new
8 submission.

9 So we will delete all reference to page
10 5, and we have already dealt with page 6, and
11 presumably, hopefully, we will never have to deal with
12 the last paragraph on page 6, the last two paragraphs,
13 but that remains to be seen.

14 MR. FREIDIN: Except --

15 MR. CAMPBELL: Are you sure you wouldn't
16 like to delete them, Mr. Chairman?

17 THE CHAIRMAN: No, we'll leave them in.

18 MR. MARTEL: Hardly. Hardly.

19 THE CHAIRMAN: We may hopefully never
20 have to implement them.

21 MR. FREIDIN: Mr. Chairman, if I might, I
22 would like the opportunity to make a very brief comment
23 about those last two paragraphs, hopefully never having
24 to refer to them again; and, that is, that when I read
25 it and it indicates that the Board will in fact take

1 this action if it believes that the negotiation process
2 has failed, it is my perception, based on the
3 cross-examination of the latter part of Panel 15, that
4 the scoping of the cross-examination towards the terms
5 and conditions which have been filed by the Ministry
6 has been helpful.

7 If I am not mistaken, the estimate of
8 time that was prepared with your assistance which took
9 us well into the future, too far into the future
10 perhaps - not perhaps - too far into the future, was
11 made I think before that process of really focusing in
12 on the terms and conditions began. I think perhaps Mr.
13 Edwards had just begun that process when we had that
14 meeting.

15 I would be hopeful that if the result of
16 the negotiation process does not in fact take a lot of
17 issues off the table but produces a good document which
18 identifies where the differences really are, that we
19 might very well see a saving of time because of the
20 focusing not only on the Ministry's terms or
21 conditions, but on perhaps an even more focused
22 difference of opinion on issues.

23 So my only comment is that I would hope
24 that the determination as to whether the negotiation
25 process failed would not be made perhaps prematurely on

1 a review of the results of a report but rather as a
2 result of observing what happens in terms of the
3 hearing process itself once we've had the advantage and
4 the Board has the advantage of having those terms and
5 conditions to assist it in controlling the process.

6 MR. MARTEL: Wasn't it Roosevelt that
7 said walk gently but carry a big stick?

8 MR. FREIDIN: Well, I think perhaps one
9 of -- well, no comment. I am sure he did.

10 THE CHAIRMAN: Well, thank you, Mr.
11 Freidin, and we shall take your comments and put them
12 into the hopper with all other comments made by counsel
13 from time to time, but we shall want to see what the
14 results are; and if it is an improvement in terms of
15 focus, and if it is an improvement in terms of the
16 length of time that it will take to complete this case
17 and produce a reasoned decision by this Board, then I
18 think everybody will turn out to be a winner.

19 MR. COSMAN: Mr. Chairman, I wonder in
20 view of the fact that one panel seems to have been
21 eliminated in the sense of the new plan, and with the
22 other steps that have been taken to shorten the
23 process, if I might ask through you, Mr. Freidin, and
24 perhaps obtain a direction from you as to a date that I
25 can advise my clients might be a fixed start date for

1 their case.

2 Would February 5th be reasonable?

3 THE CHAIRMAN: Well, we are back to the
4 old issue, Mr. Cosman, in the sense that we don't want
5 to lose time, we have no definitive way of ascertaining
6 when in fact we will be finished, it really depends on
7 the cross-examinations.

8 We have set aside the definitive time to
9 commence the period of negotiation and that is fixed,
10 and at most your clients would be impacted with respect
11 to, we suspect, only the first panel. And for us to
12 set a specific time may mean that we lose an entire
13 week of sittings if in fact we finish early and we are
14 ready for your side of the case. That is our concern.

15 We don't want to lose time, because every
16 time we make up a day or sit longer something else
17 comes up, and often it's unavoidable, you know, the
18 Board has occasionally commitments elsewhere, parties
19 are ill, parties can't be here, witnesses can't be
20 here. We try to pick up the time, where we can, and we
21 are very reluctant to sort of arbitrarily set a date
22 when in fact we may finish early, and if we are
23 successful in doing the very things that we have been
24 endeavoring to do for several months now - and that is
25 speed things up - we may lose all of that advantage in

1 the short term by losing a week.

2 And so the Board is reluctant to go
3 further than saying stay tuned, keep as best you can
4 track of where we are and it may become clearer as we
5 get closer to the February date as to exactly when you
6 will start, and it may only mean the dislocation of
7 keeping one panel of witnesses on tap.

8 I doubt very much if you will get further
9 than that before we break for the negotiations, and
10 then we are very shortly after that into the spring
11 break.

12 When do you think, Mr. Freidin, just to
13 perhaps assist Mr. Cosman, you might now be finished?

14 MR. FREIDIN: Well, I think Panel 17 will
15 begin on January the 9th and, as I indicated, I don't
16 expect to be long at all in-chief. It's going to be --

17 THE CHAIRMAN: Well, you won't be more
18 than two days.

19 MR. FREIDIN: I'll probably be more like
20 a half a day. I don't know how long the
21 cross-examination is intended to take and then there is
22 the issue of the clearcut exercise.

23 But I think, again, I can't give you an
24 estimate but my guess is that the evidence-in-chief on
25 that would probably take no more than -- no more than a

1 day, so...

2 THE CHAIRMAN: You may be starting ahead
3 of February 5th.

4 MR. FREIDIN: One moment, Mr. Chairman.

5 MS. SWENARCHUK: Mr. Chairman, excuse me,
6 but the clearcut evidence so to speak arose out of an
7 interrogatory from us. This is news to me. If that
8 evidence is to be presented to the Board, I would like
9 to consider and confer with my clients as to the form
10 of it. Am I missing something, does everybody else
11 know something I don't know?

12 MR. FREIDIN: Well, I'm not sure whether
13 you were here. I think that Mr. Kennedy indicated that
14 he would be discussing, when he gets off the stand,
15 with other parties how that evidence might go in.

16 But I think I have indicated that it
17 might very well be that the Ministry may very well feel
18 that it's necessary to present that evidence itself,
19 and I put the Board on notice at that time. I don't
20 think there is anything new in terms of the process, I
21 am just saying that we have got to get on with this
22 case and get it over with.

23 THE CHAIRMAN: Well, as we understand it,
24 Ms. Swenarchuk, we haven't been advised of any
25 agreement of the parties on the clearcut issue, it was

1 being discussed outside the hearing process amongst the
2 parties.

3 At some stage Mr. Freidin advised the
4 Board either if there was agreement the terms of that
5 agreement would be put before the Board; if there was
6 no agreement, he may wish to call evidence on the issue
7 and it would be dealt with in the formal fashion. How
8 long that will take, we are not sure.

9 MR. FREIDIN: That will be it, that's
10 correct.

11 THE CHAIRMAN: And that is going to be
12 after your case, after Panel 17; is that correct?

13 MR. FREIDIN: It's going to be part of
14 the case, but it will follow Panel 17.

15 THE CHAIRMAN: Follow Panel 17.

16 MR. FREIDIN: That's correct.

17 THE CHAIRMAN: I take it, Mr. Freidin, if
18 you are going to present it as evidence, is it going to
19 be in the form of a panel and, if it is, are we going
20 to scope that panel's evidence, or you haven't decided
21 any of that yet; or have you?

22 MS. SWENARCHUK: Mr. Chairman, again it's
23 my submission that that is not necessarily only the
24 Ministry's decision.

25 THE CHAIRMAN: No, no, I am not

1 suggesting it is. I am just trying to get an idea, if
2 it's going to be addressed in what we would call a
3 formal fashion before the Board, we would like to be in
4 a position, the Board, to set the parameters of how
5 this is going to happen, and that will be on the basis
6 of how some of the other parties and the Ministry would
7 like to see it happen. We would like the submissions
8 on how that should happen.

9 MR. FREIDIN: Well, I think it might be a
10 bit premature. I would like an opportunity to speak to
11 Ms. Swenarchuk about that matter.

12 MR. MARTEL: You might even get
13 agreement.

14 THE CHAIRMAN: All right. Well, why
15 don't --

16 MR. FREIDIN: Might, we might get
17 agreement, that's true.

18 THE CHAIRMAN: Well, why don't you
19 discuss that and then come back to the Board with some
20 indication, because if it is going to involve things
21 like scoping or another panel or something, we better
22 get the ground rules settled soon so that the parties
23 can start preparing.

24 MR. FREIDIN: Ms. Swenarchuk and I can go
25 away, lock ourselves up somewhere for a weekend and

1 negotiate.

2 MS. SWENARCHUK: As long as I specify the
3 place, Mr. Freidin.

4 MR. FREIDIN: That's right. I just
5 thought that might be a subject matter we can discuss
6 at the party.

7 THE CHAIRMAN: I think it has been a long
8 day, ladies and gentlemen. I think, if there is
9 nothing further, we will adjourn until tomorrow morning
10 at 8:30 and --

11 ---Discussion off the record

12 THE CHAIRMAN: Thank you.

13 ---Whereupon the hearing adjourned at 5:00 p.m., to be
14 reconvened on Wednesday, November 1st, 1989,
15 commencing at 8:30 a.m.
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